

**An Old Problem in a New Market: Public and Private Regulation of
Counterfeit Consumer Goods in the Chinese C2C Market**

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Abstract

The emergence of consumer-to-consumer (C2C) online marketplaces in China has greatly complicated the regulation of counterfeit goods. Endemic information asymmetries, strong consumer demand for counterfeits, and conflicting economic interests have challenged the effectiveness of independent government regulation and marketplace self-regulation but also created conditions for co-regulation. Using historical analysis, this thesis examines the evolution of government regulation and marketplace self-regulation of C2C counterfeits in China. It assesses the forces that have driven the shifts in the regulatory paradigm, and evaluates the complexity of Chinese online counterfeit regulation. The Chinese regulatory regime against fake goods online has been mostly shaped by the nation's perceived economic interests and the business interests of the chief online commercial platform, Taobao. This regime, moreover, has been gradually evolving from independent government regulation and marketplace self-regulation toward co-regulation. The well-developed regulatory paradigm, nonetheless, bears an expedient character, as regulators have often used the regulation to advance certain interests over the others. The regulation of C2C online counterfeit in China also reveals the limits of and opportunities for transnational regulatory governance of online intellectual property.

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I. Introduction

In September 2014, an electronic commerce (E-commerce) business group from China, Alibaba, launched the biggest IPO in history at the New York Stock Exchange.¹ While audiences in the US marveled at its success, the company has not always received such praise in the West. Instead, Alibaba, and especially its consumer-to-consumer (C2C) E-commerce marketplace, Taobao, has long suffered from criticism about the numerous counterfeit products listed and sold on the platform. In 2011, the United States Trade Representatives (USTR) listed Taobao as a “notorious market” for counterfeiting American products.² Although USTR removed Taobao from the list a year later, allegations of rampant counterfeit sales still remained a controversial matter for Taobao, complicating Alibaba’s pursuit of a New York-based IPO.³

This thesis studies the history of government regulation and Taobao’s marketplace self-regulation against counterfeit goods in c2c E-commerce in China. It examines how the government and the marketplace responded to pervasive counterfeit sales and evaluates the complexities of online counterfeit regulation in light of theories of business regulation. Since its inception, Taobao and the government have developed an evolving set of regulatory responses to the sales of fake wares. This thesis finds that the regulatory regime has gradually evolved from independent government regulation and marketplace self-regulation to a co-regulatory regime. The steering forces of the institutional shifts have been the interests of participants in C2C E-commerce, particularly Taobao’s perceived business interests and China’s domestic economic interests, as viewed by governmental officials.

These perceived interests have also been the greatest barriers to the implementation of strong anti-counterfeit measures, rather than purely technical constraints posed by the nature of online commerce. Although both the government and Taobao have established substantial rules and mechanisms to regulate counterfeits, their hesitancy to commit to rigorous and effective enforcement of these rules has reflected the regulators’ attempts to protect certain interests over the others—more specifically, to protect domestic interests over foreign, and direct business concerns over more indirect impacts on consumer confidence.

The development of government regulation and market self-regulation in China further reveals the limits of international governance of intellectual property rights infringements in China. The qualified efficacy of foreign pressure for greater enforcement against counterfeits demonstrates the limits of transnational regulation of intellectual property rights. Foreign brand owners, who have no direct control over regulations in China, have had to rely heavily on intermediaries like Taobao to combat infringements of their rights. By doing so, the brand owners also handed the prerogative to the intermediaries, who have selectively responded to these regulatory pressures in light of their own perceived best interests.

As a historical analysis, this thesis relies on government documents, media reports, journals, newsletters, books, online social media such as forums and Weibo (the Chinese counterpart of Twitter). To evaluate the prevalence of counterfeit goods on Taobao, I also conducted search experiments on Taobao for a number of brand name goods, using keywords of the original brand names as well as their abbreviations and alias counterfeit sellers used. To gain

¹ “Alibaba Claims Title For Largest Global IPO Ever With Extra Share Sales,” *Forbes*, September 22, 2014,

<http://www.forbes.com/sites/ryanmac/2014/09/22/alibaba-claims-title-for-largest-global-ipo-ever-with-extra-share-sales/>.

² The United States Trade Representative, “Out of Cycle Review of Notorious Markets,” *Office of the United States Trade Representative*, December 20, 2011, http://www.ustr.gov/webfm_send/3215.

³ Brandon Conrads, “Chinese Internet Giant Lobbied to be Taken Off List of ‘Notorious Markets’,” *OpenSecrets*, September 27, 2013, <http://www.opensecrets.org/news/2013/09/chinese-internet-giant-lobbied-to-b/>; Kelli B. Grant, “Can Alibaba knock out knockoffs,” *CNBC*, September 18, 2014, <http://www.cnbc.com/id/102010154#>; Melanie Lee, “Alibaba pledges to combat fake goods on its shopping portals,” *Reuters*, April 23, 2013, <http://www.reuters.com/article/2013/04/23/us-alibaba-ip-idUSBRE93M0EA20130423>.

a deeper understanding about one instructive enforcement action, I also conducted interviews with two former clients of the involved online store. However, I was not able to gain access to internal Taobao sources and government documents, which limits my ability to assess the motivations behind the regulations or to evaluate the effectiveness of regulatory enforcement, especially of government regulation. Although my analysis of the motivations and enforcement efficacy are supported by other documentations and experiments, further research with access to the internal sources would greatly help to confirm the results of my study.

This thesis only studies the regulation against counterfeit regular consumer goods, such as clothing, accessories, electronic products, and cosmetics. It excludes the regulation of counterfeit health and safety related products such as food and drugs, or highly valuable assets such as artifacts and antiques. The regulation of these products uses different mechanisms, involves different players, and generates different consequences.⁴

This thesis begins with an introduction to the C2C E-commerce market and the issue of online selling of counterfeit consumer goods in China. It proceeds with a discussion of the interests of key stakeholders, which explains their views about and responses to counterfeit regulation. Then I examine scholarly suggestions about appropriate responses to C2C online counterfeit regulation through reference to theories of business regulation and E-commerce regulation. The next section furnishes a descriptive analysis of the development of government regulation and Taobao's self-regulation against counterfeit sales. This section maps out how government regulation, marketplace's self-regulation, and their interactions evolved from 2006 to early 2014, and examines the driving forces behind these transformations. The last section further evaluates the complexity of C2C counterfeit regulation by assessing the achievements and limitations to current and past regulations, with a special focus on the issue of technical feasibility and a case study of one individual Taobao seller.

II. Development of C2C E-commerce Market and Ensuing Challenge of Counterfeits

C2C E-commerce emerged comparatively late in China but has developed quickly. In 1999, two Chinese graduates from Harvard business school established the first c2c website in China, EachNet ("Yiqu").⁵ The new e-commerce model quickly gained popularity, and its promise attracted the attention of the world leading E-commerce website eBay. In 2002, eBay formally partnered with EachNet and invested \$30 million into it.⁶ In the meantime, other native C2C websites were burgeoning, the strongest of which was Taobao. In 1999, Ma Yun founded the Alibaba Group, which first engaged in business-to-business (B2B) online commerce. In 2003, Alibaba expanded its business to C2C as Ma launched the Taobao website.⁷ From its establishment, Taobao grew at a dizzying rate and soon became the leader in China's c2c market. In February, 2004, Taobao topped the Chinalabs Internet Service Index ranking of personal

⁴ Furthermore, public discourses on fake regular consumer goods and on fake drugs and food have rarely overlapped. While one might be expecting major food or drug safety incidents, such as the 2008 poisonous milk incident, to have a spillover effect on the general issue of counterfeiting, an examination of the media reports and public conversations related to the milk incident indicates no such impact.

⁵ "How Did Taobao Beat EachNet [淘宝当年是如何干掉易趣的]," *Foreign Trade*, February 16, 2013, <http://www.cn176.com/xinwen/waimao53728.html>.

⁶ "About EachNet [关于易趣]," EachNet, <http://www.eachnet.com/abouteachnet.html>.

⁷ Lanlan Liu, "Ma Yun Adjust the Structure of Alibaba Group [马云调整阿里集团架构]," *BJ News*: B03, July 24, 2012, *Sohu IT*, <http://it.sohu.com/20120724/n348858245.shtml>.

trading sites with a growth index as high as 768 percent, in contrast with the 78 percent of the runner-up eBay EachNet.⁸ In 2005, as Alibaba purchased Yahoo! China, Taobao acquired Yahoo! China's C2C platform, Yipai.⁹

Since its inception, Taobao has sustained rapid growth and gained remarkable popularity among Chinese consumers. By 2006, Taobao occupied 80 percent of the C2C market share in China.¹⁰ Three years later, it had acquired over 170 million registered users, almost half of the 384 million Internet users in China, and its annual transaction volume exceeded 200 billion RMB (approximately \$29 billion).¹¹ As of June 2012, it had over 800 million product listings and over 500 million registered users.¹² By 2013, the annual gross merchandise volume of Taobao reached 1.1 trillion RMB (\$180 billion).¹³ Although online commerce has eliminated the geographical boundaries in many commercial transactions, Taobao's sellers, both of genuine and counterfeit goods, are concentrated in southeastern China where the market economy is the most developed.¹⁴

The graph below shows the gross merchandise volumes of Taobao in comparison to the Chinese E-commerce market from 2007 to 2013.¹⁵

⁸ XS, "Taobao Beat Its Peers and Leads in China's CTC Market [淘宝网超过国内同类对手 领先中国 CTC 市场]," *CCID*, July 2, 2004, *Sohu IT*, <http://it.sohu.com/2004/07/02/06/article220830642.shtml>.

⁹ "Review of the Ten-year History of Alibaba Group [阿里巴巴集团十年历史和重大事件回顾]," *imeigui*, January 15, 2013, *Phoenix Technology*, http://tech.ifeng.com/internet/special/mayun/content-4/detail_2013_01/15/21221192_0.shtml?_from_ralated; Jian Yang, "Alibaba Purchased Entire Yipai's Stock, Yipai's Business Closed [阿里收购一拍全部股份 一拍停止所有经营活动]," *yesky*, January 23, 2006, *TechWeb*, <http://www.techweb.com.cn/news/2006-01-23/38036.shtml>.

¹⁰ Shaoxun Wang, "Survey Shows Taobao Occupies 80% of the Market, while Paipai Less than 3% [调查称 C2C 市场淘宝份额高达 80% 拍拍网不足 3%]," *Net Ease*, April 16, 2007, <http://tech.163.com/07/0416/10/3C6OMECU000915BF.html>.

¹¹ Taobao press release, "Taobao to Help Small Businesses to Grow More Effectively," *Alibaba Group*, March 31, 2010, http://www.alibabagroup.com/en/news/press_pdf/p100331.pdf.

¹² Taobao press release, "Motion Picture Association and Taobao Marketplace Sign Joint Initiatives to Address Online Sale of Infringing Content," *Alibaba Group*, September 7, 2012 http://www.alibabagroup.com/en/news/press_pdf/p120907.pdf.

¹³ Ran Tao, "Tmall GMV Reached 441 Billion in 2013, and Taobao 1.1 Trillion [天猫 2013 年成交额 4410 亿 淘宝成交额 1.1 万亿]," *Tencent*, June 18, 2014, *Linkshop*, <http://www.linkshop.com.cn/web/archives/2014/292636.shtml>.

¹⁴ Xianwen Wang and Shenneng Xu, "Geographical Distribution of Taobao C2C Stores [中国 C2C 淘宝网络店铺的地理分布]," *Progress in Geography* 30, no.12 (2011): 1564-1569; "China Daily: Online Shopping Plagued by Infringing Activities, Nine Administrations Take Actions Against Infringement and Threaten to Close Down Illicit Stores [中国日报网: 网络购物侵权严重九部门联合严打严重者停网]," *China Daily*, July 4, 2011, *China Anti-Counterfeiting and Rights Infringing Working Group*, <http://www.ipraction.cn/2012/03/23/ARTI1332477399593329.shtml>.

¹⁵ Data for this graph are drawn from: Dick Wei and Evan Zhou, "China eCommerce: Early Stage of Gold Rush—Where Does Value Lie," JP Morgan Asia Pacific Equity Research, November 7, 2012: 30, retrieved from <https://mm.jpmorgan.com/EmailPubServlet?h=d26i7b2n&doc=GPS-978560-0.pdf>; "Gross merchandise volume (GMV) of online shopping in China from 2006 to 2013 (in billion yuan)," *statista*, <http://www.statista.com/statistics/300964/china-online-shopping-gross-merchandise-volume/>; "Taobao's gross merchandise volume from 2nd quarter 2012 to 3rd quarter 2014 (in billion yuan)," *statista*, <http://www.statista.com/statistics/323075/taobao-quarterly-gross-merchandise-volume-gmv/>.

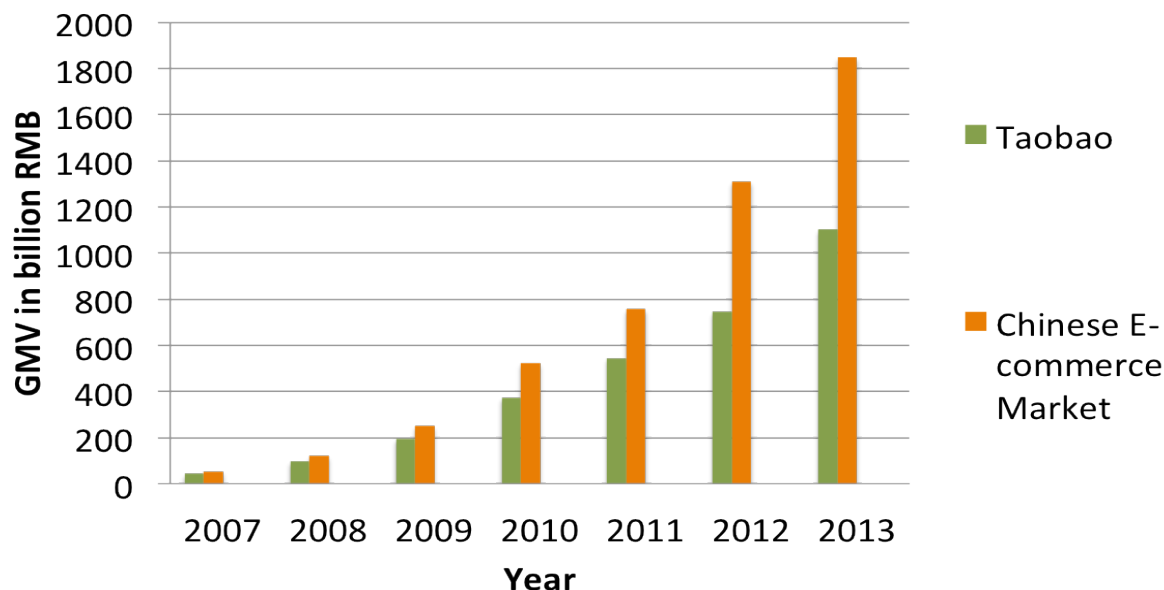


Figure 1: Gross Merchandise Volumes of Taobao and E-commerce in China

While the C2C online market mushroomed, it gave new life to the old problem of counterfeit fraud. China has long been criticized internationally for producing and distributing counterfeit goods. The country's heavy reliance on manufacturing, the government's weak enforcement of intellectual property laws, and a general lack of awareness of intellectual property rights all facilitated the producing and selling of counterfeits. According to the World Customs Organization, of the world's counterfeit goods seized from 2008 to 2010, 75 percent were produced in East Asia, mostly in China.¹⁶ In some cases, the same factories that produce genuine brand name goods also produce counterfeits with the exact same materials, designs, and even quality.

The openness, flexibility, and information asymmetry of C2C online market provided favorable conditions for sellers of counterfeit goods. In a recent online survey by China's Central Television (CCTV), 75.5 percent of the 25,200 survey participants reported that they had purchased such goods online.¹⁷ In 2011, Taobao received as many as 63.2 million claims of trademark infringing sales.¹⁸ The number grew to 87 million in 2012, reaching about ten percent of the total 800 million product listings on Taobao.¹⁹ Some of the most successful sellers on Taobao, moreover, made their fortunes by selling counterfeit goods. For instance, Xiao Anna, whose success story inspired many young people to start their own business on Taobao, turned

¹⁶ United Nations Office on Drugs and Crimes, "Transnational Organized Crime in East Asia and the Pacific: A Threat Assessment," *UNODC*, April 2013: ix, retrieved from http://www.unodc.org/documents/data-and-analysis/Studies/TOCTA_EAP_web.pdf.

¹⁷ "CCTV: More Than 70% Surveyed have Purchased Counterfeits Online [央视: 7成多网友网购过假货]," *CCTV*, August 26, 2014, *Phoenix News*, http://finance.ifeng.com/a/20140826/12999875_0.shtml.

¹⁸ "Taobao Processed 63.2 Million Infringing Claims in 2011 [淘宝网: 2011 年共处理侵权信息 6320 万条]," *China News*, March 12, 2012, <http://finance.chinanews.com/it/2012/03-12/3736354.shtml>; Taobao press release, "Motion Picture Association."

¹⁹ Jingru Yang, "Taobao Dealt with 87 Million Infringing Notices in the Last Year[淘宝网去年处理侵权信息 8700 万条]," *Shenzhen News*, March 12, 2013, *China Economics*, http://www.ce.cn/macro/more/201303/12/t20130312_24192203.shtml; Taobao press release, "Motion Picture Association."

out to be a seller of counterfeits. In 2010, the police uncovered her inventory of fake brand name apparel and arrested her for selling counterfeit goods.²⁰

III. The Importance of Counterfeit Regulation—The Interests of Major Stakeholders

Stakeholder interests in C2C counterfeit regulation are complex and multi-faceted. The prevalence of counterfeits on Taobao disrupts fair and healthy market competition, hurts the legitimate interests of many E-commerce participants, and threatens the legitimacy of Taobao as a commercial entity. However, as the thriving counterfeit trading on Taobao implies, not all participants in C2C online trading equally resent counterfeit goods—in fact, some welcome them. The characteristics of C2C E-commerce and its regulation further complicate the issue, creating situations where participants develop ambivalent or even paradoxical views on counterfeits and counterfeit regulation.

Clarifying the interests of the stakeholders is critical to understanding the development of regulatory responses to this issue. Whereas action against counterfeit goods helps to constitute the emerging electronic market and corrects the market failure of fraudulent selling, regulators often face conflicting pressures and interests from an array of constituents.

Consumers

The selling of counterfeit goods has traditionally been regarded as a commercial fraud that hurts consumer interests. On this view, buyers receive something worth less than they expect. However, contrary to the traditional perception of counterfeiting as a business fraud, consumers in C2C online marketplaces in China cannot be simply regarded as the victims of counterfeiting. Many consumers, through their demand for counterfeits, especially fake luxurious goods, have in fact become the accomplices of online counterfeiting.

Consumer sentiments toward counterfeits in C2C online marketplaces like Taobao are complicated and ambiguous, and largely contingent on the types of merchandise at issue. In general, consumers of counterfeit brand name or luxury apparel and accessories tend to care less about the genuineness of the articles that they are purchasing, and may even actively seek out counterfeits. To these consumers, the biggest draw of counterfeits is the low price. Affordable shoes and bags that plausibly pass as the real brand name articles have almost certainly lured millions of consumers into purchasing counterfeits on Taobao. As one consumer commented to a local reporter on his purchase of fake Nike shoes, “Of course I know they are knockoffs—but these shoes only cost 185 RMB, and they would cost 1250 RMB in department stores!”²¹

Consumers of cosmetics and electronic goods, on the other hand, tend to be more wary of counterfeits. More consumers have expressed concern over counterfeit beauty products and

²⁰ Yinchuan Yan, “The Entrepreneurial Fairy Tale of Taobao Seller Xiao Anna: From Selling Counterfeits to Having a Brand of Her Own (2) [淘宝姑娘肖安娜创业童话: 从卖A货到自有品牌(2)],” *Business*, June 10, 2011, *Phoenix News*, <http://finance.ifeng.com/gem/story/20110610/4134288.shtml>; Xiaochen, “Ma Yun: In Memory of the Vanished Taobao Seller Xian Anna [马云: 纪念1位消失的淘宝店主肖安娜],” *Xiaochen's Blog (blog)*, October 22, 2010 (11:34:51 a.m.), http://blog.sina.com.cn/s/blog_7068335f0100ns20.html.

²¹ Jinghua Jia, “Taobao's Counterfeit Plague: a Deadlock with No Solution [淘宝假货泛滥: 一个无解的死局],” *Baidu Baijia*, September 8, 2014, <http://jiaweb.baijia.baidu.com/article/28698>.

electronic products. On online forums and the Chinese counterpart of Twitter, Weibo, consumers who had been cheated into buying counterfeit beauty and electronic products have frequently complained and posted about the fraudulent sellers. Some more indignant consumers even made lists of fraudulent sellers on online forums, blogs and Weibo.²² The characteristics of beauty and electronic goods lend themselves to greater consumer concern about counterfeiting. With these goods, counterfeiting is more prone to affect safety or functionality than clothing and accessories. Low-quality fake cosmetics can put their consumers' wellness at risk. Knockoff electronic products, according to the consumer complaints online, tend to be sold at prices similar with the genuine ones, but the counterfeits often perform poorly or turn out to be unusable.

Sellers

Sellers on Taobao also have mixed attitudes toward the prevalence of counterfeit goods on the platform. Action against counterfeit selling would supposedly protect legitimate sellers and undercut illicit sellers. As a result, the latter tend to oppose strong anti-counterfeit regulations. Nevertheless, regulations with weakly enforced rules do not bother many illicit sellers. While some of them are simply untouched by Taobao's and the government's restricted enforcement capacity, others have developed effective strategies for circumventing the regulation.

Intriguingly, while legitimate sellers applaud effective regulation against the counterfeit goods that compete unfairly with their businesses, they sometimes resent the regulation even more than counterfeit sellers do. Legitimate sellers suffer when the regulation overreaches. They are often unduly burdened when the regulators apply stringent restrictions indiscriminately to all sellers online, raising their costs and forcing them to implement selling policies that expose them to unscrupulous buyers.

Brand Owners

While consumers and sellers possess ambiguous attitudes toward counterfeit regulation on Taobao, brand owners, whose interests are directly undermined by counterfeits, have been at the forefront of advocacy for counterfeit regulation. Both domestic and foreign manufacturers and retailers of branded goods have urged Taobao to strengthen its counterfeit regulation and collaborated with Taobao in anti-counterfeit initiatives and campaigns. Unlike consumers and sellers, who have some reservations about counterfeit regulation, brand owners appear to uniformly view counterfeits on Taobao as threats to undercut their brand values and legitimate business.

Although domestic brand owners have contributed to promoting counterfeit regulation on Taobao, foreign brand owners, especially American and European luxury, beauty, and sports producers, have played a more active role. Many brand owners, such as Mary Kay, Adidas, Chanel, and Bose B.V., have, at different times, provided specific information about counterfeit

²² For instance, a blogger made a list of fake beauty products sellers on Sina Blogs at http://blog.sina.com.cn/s/blog_52fed4b80100ak4w.html, and a consumer who purchased fake iPhone accessories exposed detailed information about his interaction with the seller on Taobao's forum at <http://bbs.taobao.com/catalog/thread/154501-253528599.htm>.

listings to Taobao and urged it to take them down.²³ Apart from these regular collaborations, Coach and Louis Vuitton have signed MOUs with Taobao in 2011 and 2013 respectively, establishing formal partnerships with the website and urging it to enforce active prevention and policing policies.²⁴

Foreign businesses' intense efforts to press Taobao for more stringent regulation also reflect broader concerns about China's weak intellectual property protections. According to the 2011 Business Climate Survey conducted by the American Chamber of Commerce in the People's Republic of China (AmCham-China), two thirds of the surveyed American business believed that intellectual property rights protection was crucial to their business in China. 70 percent of the respondents complained that China's intellectual property rights protection was ineffective.²⁵

The vital interests of these foreign businesses have also triggered pressure from foreign governments and international organizations. USTR included Taobao in its "notorious market" list of 2011 in order to pressure Taobao to take further anti-counterfeiting measures against counterfeit American products. When the American agency removed Taobao from this list, it still urged Taobao "to further streamline procedures for submitting and responding to notifications to decrease the time required for taking down listings of counterfeit and pirated goods and to continue its efforts to work with and achieve a satisfactory outcome with U.S. rights holders and industry associations."²⁶ In 2013, Taobao also signed an agreement with the International Anti-Counterfeiting Coalition (IACC), a US-based non-profit organization that represented business interests in trademark infringement.²⁷

The Government

Despite some moves toward improving public access to the outcomes of governmental decision-making, internal processes of the Chinese state remain shrouded from public view. The debates that shape government rule-making rarely receive airings through public hearings or press coverage. With limited access to the government's policy-making deliberations, it is difficult to reach definitive conclusions about the government's stance on the regulation of online counterfeit sales. However, a glimpse of the history of intellectual property rights in China offers a way to understand where the government stands.

The development of Chinese intellectual property rights laws since the 1970s has been marked by two key concepts—perceived domestic economic interests and external pressure. The Chinese government established the modern legal framework of intellectual property rights in part to legitimize China's economic reform in the late 1970s. The introduction and reform of China's early intellectual property laws served primarily to attract foreign investment and was part of the package to establish bilateral trade relation with the United States. Later, as China

²³ "Taobao Releases Monthly Result in Combating Counterfeits, receiving 462 reports in total [淘宝公布一个月打假结果 共接到 462 封举报信]," *Sohu IT*, December 24, 2009, <http://it.sohu.com/20091224/n269177168.shtml>

²⁴ Hui Zhou, "Many Luxurious Brands Slows Down Retail Expansion, LV Cooperate with Taobao to Fight Counterfeits [多个奢侈品牌将缩减开店 LV 与淘宝联合打假]" *Guangzhou Daily*, July 8, 2014, *Phoenix News*, http://nb.ifeng.com/gngj/detail_2014_07/08/2555829_0.shtml; J.T. Quigley, "Taobao to Crack Down on Fake Louis Vuitton Goods," *The Diplomat*, October 11, 2013, <http://thediplomat.com/2013/10/taobao-to-crack-down-on-fake-louis-vuitton-goods/>.

²⁵ "Regulatory Barriers, Indigenous Innovation Policies Pose Threat to Companies in China." *U.S. Newswire*, Mar 21, 2011.

²⁶ The United States Trade Representative, "Out of Cycle Review of Notorious Markets," *Office of the United States Trade Representative*, December 13, 2012, <http://www.ustr.gov/sites/default/files/121312%20Notorious%20Markets%20List.pdf>.

²⁷ "IACC and Taobao Marketplace Sign Agreement to Combat Counterfeiting Online," *IACC*, August 15, 2013, <http://www.iacc.org/announcements/international-anticounterfeiting-coalition-and-taobao-marketplace-sign-agreement-to-combat-counterfe>.

joined the WTO in the 1990s, it confronted insistent demands that it strengthen its intellectual property rights enforcement, especially from the US and international trade organizations. Meanwhile, Chinese politicians and businessmen shaped intellectual property policies in the hopes of benefiting the development of domestic economy. On one hand, the government deliberately adopted loose enforcement regimes for intellectual property rights laws, so that the country's economy could absorb and internalize knowledge from abroad. On the other hand, as some Chinese businesses began to feel hurt by the lack of intellectual property rights protection, they pressured the government for more effective protection, with some results.²⁸ On the whole, the Chinese government has viewed intellectual property rights primarily as an economic tool. Although it was frequently pressured by foreign as well as domestic interests to strengthen intellectual property rights protection, its responses consistently sought to maximize short-term domestic economic development.

The domestic economic focus of China's intellectual property rights law enforcement provides the government incentives to both regulate and tolerate counterfeits on Taobao. First, as the vice director of the State Intellectual Property Office (SIPO) pointed out in 2012, Chinese companies were becoming growingly conscious of the usefulness of intellectual property in a competitive market economy, demonstrated by an increase in intellectual property lawsuits. As a result, they demanded stronger enforcement of intellectual property rights laws and a better intellectual property environment in China.²⁹ These domestic businesses may well push the Chinese government to strengthen intellectual property protection, which entails more stringent regulation of online counterfeit goods.

At the same time, the domestic economic focus can also propel the government to give Taobao considerable leeway to deal with the counterfeits on its own. Taobao's parent company Alibaba occupies 80 percent of the Chinese E-commerce market and contributes to about two percent of the country's GDP, and Taobao alone creates millions of jobs for self-employed entrepreneurs, arguably with significant positive spillover effects on consumer demand.³⁰ Thus, if the Chinese government is to prioritize the development of domestic economy, it has strong incentives to attend to Alibaba's and Taobao's interests. Foreign businesses have also noticed the government's bias toward Chinese businesses. American businesses represented by AmCham-China, for instance, have complained that Chinese government regulations systematically favor local firms compared to foreign businesses.³¹

External pressures from foreign businesses, governments, and international organizations, by contrast, create incentives for the Chinese government to tighten its regulation against online counterfeits. Counterfeits have arguably hurt China's reputation more badly than the economy. Concern about China's global standing gives the government additional reason to answer to the foreign pressure with more rigorous regulation and enforcement against online counterfeits and other intellectual property infringing activities.

²⁸ Andrea Wechsler, "Intellectual Property Law in the PR China: A Powerful Economic Tool for Innovation and Development," *Max Planck Institute for Intellectual Property, Competition & Tax Law Research Paper* 09-02 (2008).

²⁹ Trevor Little, "The Chinese companies pushing the brand boundaries," *World Trademark Review*, December 3, 2013, <http://www.worldtrademarkreview.com/Blog/detail.aspx?g=07cf20d7-7e45-4f4a-9fda-1b1483ec9d68>.

³⁰ Charles Clover, "Alibaba growth slows ahead of IPO," *The Financial Times*, January 29, 2014, <http://www.ft.com/intl/cms/s/0/bc0b529c-88ae-11e3-9f48-00144feab7de.html#axzz3Gcq4i1o7>; Lara Logan, "Jack Ma Brings Alibaba to the U.S.," *CBS NEWS*, September 28, 2014, <http://www.cbsnews.com/news/alibaba-chairman-jack-ma-brings-company-to-america/>.

³¹ "Regulatory Barriers, Indigenous Innovation Policies."

Taobao (The Marketplace)

Counterfeits, therefore, both benefit and threaten Taobao's business interests as Taobao interacts with stakeholders whom have different views on counterfeits and counterfeit regulation. Below is an illustration of the major counterparties and stakeholders in Taobao's business, their attitudes toward counterfeits, and their relationships and interactions with Taobao:

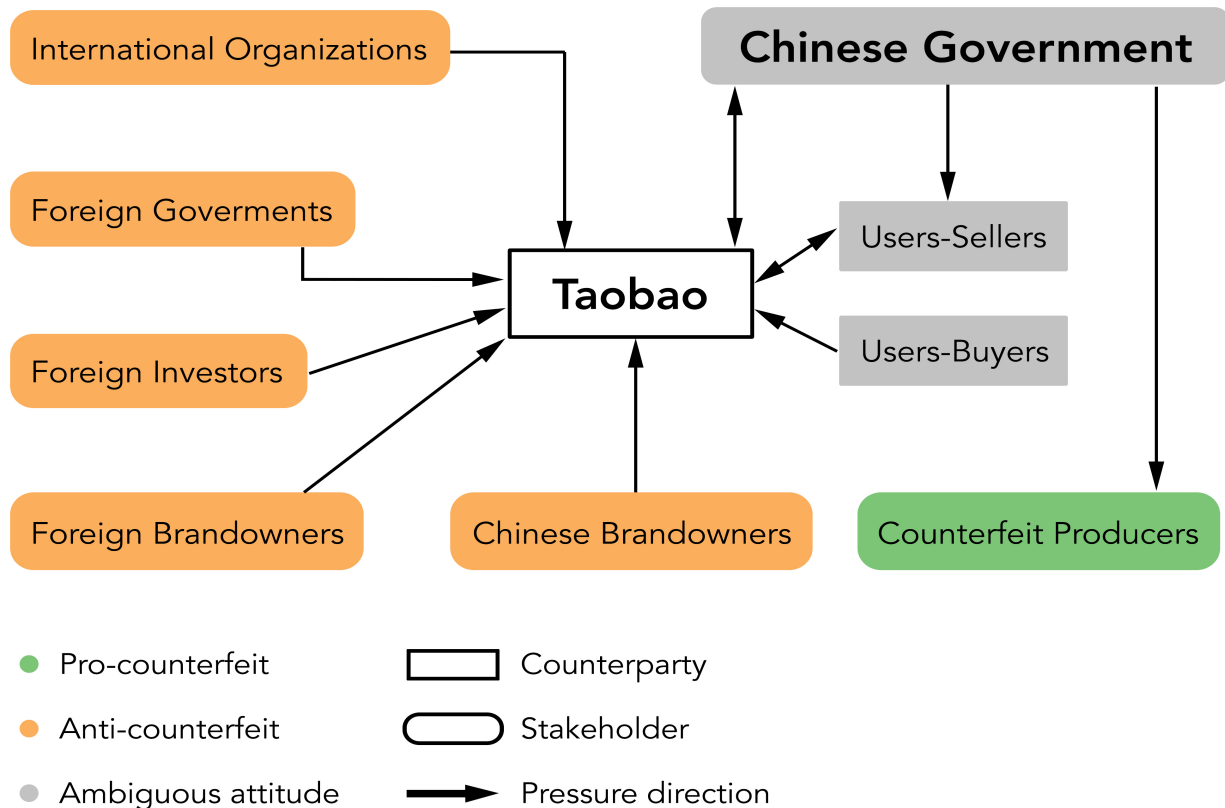


Figure 2: Relationships Between Taobao and the Major Counterparties/Stakeholders in Its Business

As an online retail service provider, Taobao first and foremost needs to cater to the interests of its users to achieve business success. The users' ambiguous interests in counterfeit goods provide perhaps the greatest incentive for Taobao to maintain flexible regulation. Some Taobao consumers want action against sellers of counterfeit goods or more generous policies about returns and the handling of consumer complaints, but millions of Chinese consumers continue to demand access to cheap counterfeits, especially of knockoffs of luxury goods. Moreover, the strength of Taobao as a C2C online marketplace lies largely in its open and flexible environment. As we will see, the adoption of regulations frequently stirs up discontent among sellers and threatens to drive them away from Taobao. Thus, if Taobao imposes more stringent regulatory standard or substantially strengthens the enforcement of existing standards, it will risk alienating more sellers.

While Taobao juggles the contradictory regulatory demand from its users, the upward regulatory pressure from brand owners compels it to respond with more stringent regulation. As

mentioned before, many brand owners have reported counterfeit listings to Taobao and urged it to take them down, while some have formally partnered with Taobao to combat counterfeits. Some brand owners, like the Chinese lingerie brand Finer and the Swiss luxurious watch producer Omega, have taken more aggressive means by filing lawsuits against Taobao and the individual counterfeit sellers.³² Although none of the lawsuits exerted any significant impact on Taobao's business, they were detrimental to Taobao's reputation, especially outside China.

However, Taobao's business interests also conflict with the brand owners' interests. While the interests of the brand owners are best served when Taobao removes all the counterfeit listings, Taobao benefits by preserving some counterfeit goods online to attract a greater number of users. Furthermore, the brand owners' definition of intellectual property rights infringement is sometimes at odds with Taobao's. Many brand owners broadly define counterfeits as any items sold by unlicensed retailers that bear their trademarks. On such grounds, some brand owners, such as Finer, have requested Taobao to remove not only the knockoffs but also genuine products sold by unlicensed sellers.³³ Such requests clash with the essence of C2C E-commerce, which is to provide trade platform for free and unaffiliated individuals, including discounters, and Taobao has chosen to guard the fundamental interests of C2C marketplace, as it did in the case of Finer.³⁴

Taobao itself also suffers from the negative consequences of counterfeit sales on its site. Regardless of what others demand, counterfeits are, after all, illegal. Thus, Taobao is obliged to delegitimize counterfeits explicitly in its policies in order to legitimize its business. Moreover, the pervasive sales of counterfeits on Taobao also became a significant barrier to Alibaba's pursuit of launching IPO in the US stock market. In an interview, Taobao's founder and former CEO, Ma, expressed his grievances over the accusations about Taobao's inaction against counterfeits on its site, "Taobao does not produce counterfeits," he observed. "Counterfeits produced by society are just more visible on Taobao. There is no way I can eliminate them, because I am not law enforcement and I cannot put the counterfeit sellers in prison."³⁵

IV. Theoretical Solutions to C2C Online Counterfeit Regulation

Although the major stakeholders in C2C E-commerce have demonstrated complicated and even paradoxical interests in counterfeit regulation, counterfeit sales on Taobao and inadequate regulation clearly harm the legitimate interests of consumers, sellers, brand owners, and the marketplace itself. Allowing counterfeits to thrive freely on Taobao can never be the ultimate solution, yet Taobao's need to balance the interests of its users and the characteristics of C2C E-commerce have made counterfeit regulation a real challenge.

³² "Omega Sues Taobao for Selling Counterfeits, Bringing Price Filtering System Under the Spotlight [欧米茄起诉淘宝售假 网店价格过滤机制成焦点]," *Economics Observer*, July 21, 2011, *Sina*, <http://finance.sina.com.cn/roll/20110721/135310192058.shtml>; Xiaoli Lin and Dongdong Suo, "Finer Sues Taobao for Counterfeits [芬奈儿状告淘宝售假]," *Guangzhou Daily*, April 6, 2011, http://gzdaily.dayoo.com/html/2011-04/06/content_1312744.htm.

³³ Qiuyang He, "Controversies Surrounds Finer's Lawsuit Against Taobao [芬奈儿淘宝"打假"存异议]," *Information Times*, December 21, 2010, *NetEase*, <http://tech.163.com/10/1221/04/60DB915L000915BF.html>.

³⁴ *Ibid.*

³⁵ "Ma Yun Replies to Blames on Taobao's Counterfeits: I Cannot Eliminate Counterfeits [马云回应淘宝造假指责: 我没办法把假货打掉]," *Tencent*, December 18, 2010, <http://tech.qq.com/a/20101218/000132.htm>.

But online counterfeiting is not a challenge unique to Chinese E-commerce. The advent of C2C E-commerce in the late 1990s exacerbated the problem of counterfeit sales worldwide. The problem of online counterfeits has captured the attention of scholars, who studied the nature of C2C online sales of counterfeit goods and proposed regulatory solutions.

It is worth noting that most of the studies on C2C counterfeit regulation are premised on asymmetric information, which entails two aspects. First, information distribution tends to be asymmetric between buyers and sellers, and deceptive sellers can easily exploit buyer's information disadvantages by manipulating their displayed product information through mimicking the representations of authentic products.³⁶ Second, asymmetric information exists between regulators, including both the marketplace and the government, and deceptive sellers. Due to their anonymity, counterfeiters in online markets are more difficult to identify than counterfeiters in traditional markets.³⁷ Nonetheless, one cannot simply assume that consumers have no means of identifying counterfeit goods online. In many cases, the extraordinarily low prices of counterfeits, especially counterfeit luxuries, send clear signals to both buyers and regulators. And as the analysis of consumer interests has shown, many fake luxury consumers consciously purchase counterfeits on Taobao.

i. The Role of Government and Marketplaces in Online Counterfeit Regulation

Scholars have generally reached a consensus that the government can assist the growth of E-commerce through provision a strong rule of law. In an early study of E-commerce readiness, Oxley and Yeung acknowledged that information asymmetry, exacerbated by low costs of entry and exit in the online market, was an inherent feature of E-commerce that led to transaction hazards. Based on a cross-sectional analysis of empirical data from 30 countries, they concluded that the institutional environment, a critical component of which was the rule of law, was crucial to the healthy development of E-commerce.³⁸ In the examination of how E-commerce law should be formulated in the United States, Ribstein and Kobayashi argued that E-commerce should be ruled by state law rather than by federal law. The flexibility and variability of state laws, along with the competition among states' legislatures, would help the regulatory approaches to the newly emerged E-commerce industry evolve into the optimal form.³⁹ The principle that underlay their arguments was to avoid overregulation, which could hamper the efficiency and free transaction flow of E-commerce—a principle that reflected the neoliberalism that had dominated commercial regulation and sustained the standard of *caveat emptor* in many aspects of US commerce for the past four decades.

Some scholars disagreed with upholding the *caveat emptor* principle in E-commerce, but still held that the marketplaces were in the best position to regulate due to the information asymmetry inherent in E-commerce. Snyder maintained that the *caveat emptor* principle would not work in E-commerce market because consumers would not have the chance to inspect the merchandise until they received them after payment. Drawing from the lessons of pay-per-call regulations, he concluded that governments must provide a legal framework that could guide the E-commerce industry in regulating against fraud. Yet despite acknowledging the value of

³⁶ Tamilla Mavlanova and Raquel Benbunan-Fich, "Counterfeit Products on the Internet: The Role of Seller-Level and Product-Level Information," *International Journal of Electronic Commerce* 15, no. 2 (2010): 79-104.

³⁷ Herbert J. Hammond and Justin S. Cohen, "Intellectual Property Issues in E-Commerce," *Tex. Wesleyan Law Review* 18, (2011): 750.

³⁸ Joanne E. Oxley and Bernard Yeung, "E-Commerce Readiness: Institutional Environment and International Competitiveness," *Journal of International Business Studies* 32, no. 4 (2001): 705-723.

³⁹ Larry E. Ribstein and Bruce H. Kobayashi, "State Regulation of Electronic Commerce," *Emory Law Journal* 51 no.1, (2002): 1-82.

government regulation, he still maintained that the ultimate liability to oversee the business must fall on the auction houses, which possessed information advantage to regulate efficiently and effectively.⁴⁰ Chua and Wareham responded to Snyder's study by further examining the self-regulation of online auction houses. They found that the auction houses were indeed in the best position to oversee the auctions due to information asymmetry.⁴¹ However, contrary to Snyder's claim that self-regulation was insufficient, they discovered that the online auction industry had in fact established sophisticated formal and informal regulatory institutions to fight auction fraud. Formal institutions, which aimed at restraining behaviors, included: occasional referrals to the police in egregious cases; reputation systems based on consumer feedback, usually through rating their experiences with sellers; complaints to auction houses; insurance provision; and escrow mechanisms. Informal approaches to reduce asymmetric information ranged from reliance on intermediaries, collectives, self-interest, charity, and vigilante action in response to problematic transactions.⁴² However, despite their findings and their support for self-regulation, Chua and Wareham also recognized the limits of these institutions, particularly their weakness in protecting new entrants in the market.⁴³

ii. The Limits of Marketplaces' Self-regulation

The existing literature reflects a rough scholarly consensus that government should step back while marketplaces should take the lead in counterfeit regulation in C2C E-commerce. Despite such consensus, E-commerce marketplaces have in fact faced significant limits in implementing effective self-regulation.

The 2008 American court decision in *Tiffany Inc. v. eBay Inc.*, for example, acknowledged the limits in the marketplaces' self-regulation against counterfeit sales. In this case, the court ruled that eBay was not liable for the trademark infringements by the numerous counterfeit Tiffany products sold on its website, because eBay's general knowledge about the counterfeits on its website did not suffice to inform it of the specific infringements or to impose on it the burden to take affirmative actions.⁴⁴ Scholars approved of the court's decision and advocated for statutory safe harbor provisions guaranteeing service providers like eBay to have limited liability, which would promote the growth and development of Internet Commerce.⁴⁵ This judicial attempt to limit eBay's liability reflected two major constraints in the marketplaces' self-regulation: information and costs. Even though compared with other regulatory players, marketplaces naturally possessed the most information about fraudulent transactions, that information is not necessarily sufficient for them to proactively inspect literally millions of online sellers for counterfeit wares. To acquire sufficient information to do so, the marketplaces

⁴⁰ James M. Snyder, "Online Auction Fraud: Are the Auction Houses Doing All They Should or Could to Stop Online Fraud," *Federal Communications Law Journal* 52, (1999):453-472.

⁴¹ Cecil Eng Huang Chua and Jonathan Wareham, "Fighting Internet Auction Fraud: An Assessment and Proposal," *Computer* 37, no. 10 (2004); Chua, Cecil and Jonathan Wareham, "Self-Regulation for Online Auctions: An Analysis," *ICIS 2002 Proceedings* (2002): 115-125.

⁴² Chua and Wareham, "Self-Regulation," 119-122,124.

⁴³ Chua and Wareham, "Self-Regulation."

⁴⁴ Elizabeth K. Levin, "A Safe Harbor for Trademark: Reevaluating Secondary Trademark Liability After *Tiffany v. eBay*," *Berkeley Technology Law Journal* 24, (2009): 502.

⁴⁵ Levin, "A Safe Harbor for Trademark," 491-527.

would have to involve in the transactions closely, which would arguably give rise to high administrative costs, potentially hampering the development of Internet commerce.⁴⁶

The business interests of the marketplaces also deter the implementation of effective self-regulation. The marketplaces need to maintain their reputation as open and free marketplaces; but this need to attract more users may give them the incentive to avoid strict policies toward fraudulent behaviors, especially if those behaviors accord with consumer preferences.⁴⁷ Tolerating the widespread sale of counterfeits may also attract more customers, especially in the context of fake luxury goods. Consumers of such products may very well knowingly purchase counterfeit brand goods in order to acquire the social class status attached to the brand name at low costs.⁴⁸

The personal interests of the employees at the E-commerce companies may represent an even more powerful constraint on effective self-regulation. A group of Chinese journalists revealed in April 2012 that a large proportion of employees at China's largest C2C marketplace, Taobao, had been involved in serious corruption by taking bribes from counterfeit sellers. These practices not only boosted the business of the counterfeit sellers but also directly harmed the business of legitimate sellers. Although the managers of Taobao were fully aware of this corruption, they found it extremely difficult to effectively act against it without significantly undercutting their business in this rapidly expanding and changing industry.⁴⁹

iii. C2C Counterfeit Regulation and Theories of Self-regulation

The potential and problems of the marketplaces' self-regulation against counterfeits in C2C E-commerce fit well into the broader discussion of business self-regulation. Self-regulation is particularly useful when two conditions are met—the existence of some market failure, such as information asymmetry; and a clear cost advantage of self-regulation over traditional public regulation.⁵⁰ Information asymmetry is inherent in the C2C E-commerce market, and the marketplaces' significant access to information about buyers and sellers makes their self-regulation against fraudulent transactions much cheaper than external, such as governmental, regulation. Furthermore, the C2C marketplaces, like other businesses, ought to have the incentives to self-regulate against at least some fraudulent practices. Self-regulation helps them preserve their business interests, such a reputation for fair dealing. It may also deflect proposals for more intrusive and costly government intervention,⁵¹ and bolster competitive advantages.⁵²

However, attempts at the self-regulation of online counterfeit sales in China also challenge the established theories on effective self-regulation. Scholars traditionally held the view that private interests of the business and public interests must coincide, either naturally or enforced by external pressure, for self-regulation to be reliable and effective.⁵³ The central

⁴⁶ Mary Calkins et al., "Mineshafts on Treasure Island: A Relief Map of the eBay Fraud Landscape," *Pittsburg Journal of Technology Law and Policy* 8, (2008): 1-47.

⁴⁷ Andrés Guadamuz González, "PayPal and eBay: The Legal Implications of the C2C Electronic Commerce Model," in *18th BILETA Conference: Controlling Information in the Online Environment, April, QMW, London, 2003*.

⁴⁸ Samuel Otis and Varun Grover, "E-Commerce: A Brand name's Curse," *Electronic Markets* 20, no. 2 (2010): 148.

⁴⁹ Yan Shi et al., "Investigation of Corruptions in Taobao," *IT Time Weekly* no. 8 (2012).

⁵⁰ Anthony Ogus, "Rethinking Self-Regulation," *Oxford Journal of Legal Studies* (1995): 97.

⁵¹ Ogus, "Rethinking Self-Regulation," 98; Edward J. Balleisen, "The Prospects for Effective Coregulation in the United States: A Historian's View from the Early Twenty-First Century," in *Government and Markets: Toward a New Theory of Regulation*, ed. Edward J. Balleisen and David A. Moss (New York: Cambridge University Press, 2010), 450-453.

⁵² Neil Gunningham and Joseph Rees, "Industry self-regulation: An Institutional Perspective," *Law & Policy* 19, no. 4 (1997): 366.

⁵³ Gunningham and Rees, "Industry self-regulation," 389-392.

problem of industry self-regulation, as Gunningham and Reese recognized, is the short-termism of much corporate management.⁵⁴ However, with the high consumer demand for counterfeit luxurious goods and the indifference of many sellers about the issue, the Chinese marketplaces' ineffective self-regulation of online counterfeits may actually be an effective response to both conflicting public interests and its own long-term business interests. Nonetheless, the marketplaces' intentional tolerance of counterfeits to attract sellers does demonstrate another potential weakness of self-regulation—the frequent unleashing of a “race to the bottom” in regulatory standards.⁵⁵

Another two critical steps towards building a successful self-regulatory regime are what Gunningham and Reese called developing “industrial morality” and “institutionalizing responsibility.”⁵⁶ However, these two steps are difficult to bring out success in the marketplaces' self-regulation against counterfeits. “Industrial morality” requires establishing a normative framework similar to industry's codes of conduct but fully compatible with the public interest. “Institutionalizing responsibility” extends beyond the former and asks to build the moral principles, such as transparency and accountability, into the corporation's structures of decision-making and operation. However, C2C websites are different from other types of enterprises that self-regulate. These online marketplaces host sales but don't actually sell anything themselves. Hence, developing moral codes of conduct and institutionalizing them can at most improve the marketplaces' regulatory capacity, but cannot restrain the sellers' behaviors in the absence of extensive training or licensing programs that inculcate those norms in the numerous widely dispersed online sellers. Embedding such morality and responsibility into the conduct of individual online sellers poses different, and maybe impossible, challenges.

An examination of both the theoretical and empirical researches of E-commerce regulation and self-regulation in general suggests that marketplaces alone cannot solve the problem of online counterfeit sales, and that a multi-player regulatory paradigm is likely to be required. Marketplaces' self-regulation has strong merits and potential in fighting counterfeit fraud, yet it is unlikely to escape the prevailing weaknesses of business self-regulation. The partial coincidence of public interests and marketplaces' business interests only strengthens the need for the government to attend to those stakeholders whose interests are hurt by online counterfeits.

V. Responses to C2C Market Counterfeits—Government Regulation and Marketplace Self-Regulation in China

Government regulation and Taobao's private regulation against counterfeits on the C2C online marketplace both formally began in 2006, the same year Taobao took over 80 percent of the entire C2C market share in China. As Chinese C2C E-commerce, led by Taobao, burgeoned in the years that followed, regulations of the enduring counterfeiting problem continued to intensify. The development of both the public and the industry's self regulatory paradigms

⁵⁴ Gunningham and Rees, "Industry self-regulation," 374.

⁵⁵ Ogus, "Rethinking Self-Regulation," 106.

⁵⁶ Gunningham and Rees, "Industry self-regulation," 376-389.

followed a rather clear pattern—from building up regulatory infrastructure from scratch to strengthening regulatory enforcement, and, in the end, to greater collaboration, which potentially paved the way for the establishment of a co-regulatory paradigm. Based on this pattern, the development of government regulation and marketplace self-regulation against C2C market counterfeits in China can be divided into three corresponding stages.

A Brief Introduction of the Structure of the Chinese Government

To grasp how government regulation against online counterfeits works, it is necessary to first understand how the government works. Below is an illustration of the structure of the state governance of China:

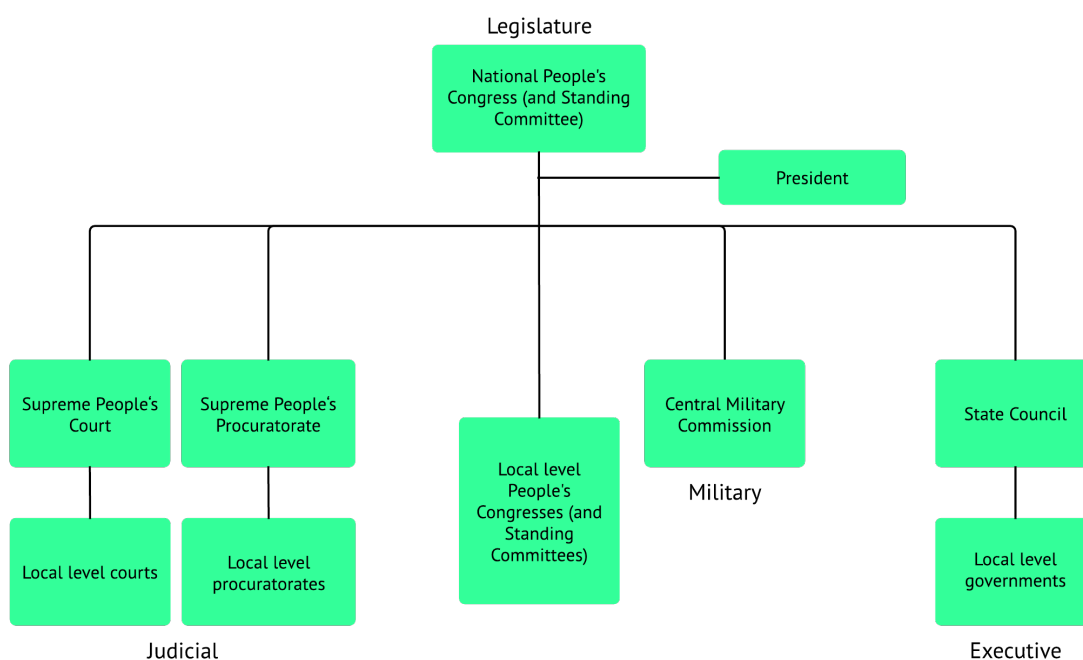


Figure 3: State Governance in China

The State Council, also known as the Central People's Government, leads and oversees the state and local administrative organs, as demonstrated in the diagram below.⁵⁷ These administrative organs exercise administrative powers within designated areas, and they lead and oversee their provincial and local subordinates.⁵⁸ They also have the power to make and enforce administrative orders, rules, and guidelines, which are legally binding but subject to the higher legal status of statutes and the Constitution. In the absence of E-commerce legislations, the

⁵⁷ "State Council of the People's Republic of China," *The Central People's Government of the People's Republic of China*, http://www.gov.cn/guowuyuan/gwy_zzjg.htm.

⁵⁸ For more information on the structure of the government of China, visit the official government website www.english.gov.cn.

administrative laws are the primary guidelines to C2C counterfeit regulation. Below is a simplified illustration of the structure of the State Council, along with the administrative agencies that have been the players in government regulation against online counterfeits:

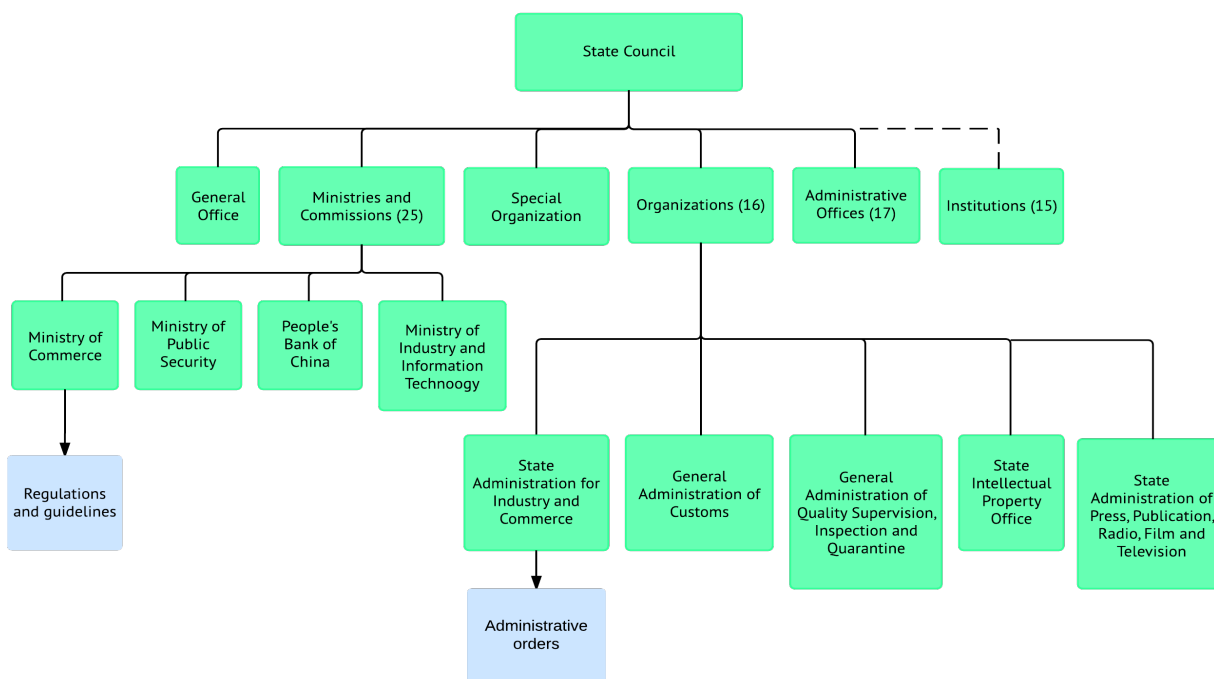


Figure 4: Structure of the State Council

The two primary state-level regulators are the Ministry of Commerce (MOFCOM) and the State Administration for Industry and Commerce (SAIC). The former is a ministerial authority under the State Council responsible for the policy-making pertaining to trade, commerce, foreign investment, and the market economy.⁵⁹ The latter is an executive agency of the State Council responsible for market regulation and administrative law enforcement.⁶⁰

Other important enforcement agencies in online counterfeit regulation include the Ministry of Public Security (MPS) and the General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ). The MPS is the central police department. Like the Administrations for Industry and Commerce (AICs), the police are also in charge of investigating and confiscating counterfeit goods. The former administer administrative penalties to those who violate administrative orders or civil laws; the latter take charge of cases that qualify as crimes, which involve producing or selling counterfeits worth more than 50,000 RMB.⁶¹ The AQSIQ is in charge of counterfeit regulation in production, whereas the SAIC is responsible for counterfeit regulation in transactions.⁶²

⁵⁹ "Mission," *Ministry of Commerce People's Republic of China*, <http://english.mofcom.gov.cn/column/mission2010.shtml>.

⁶⁰ "Mission," *State Administration for Industry and Commerce People's Republic of China*, <http://www.saic.gov.cn/english/aboutus/Mission/>

⁶¹ Pinbin Huang and Kechu Wang, "Police Receives Questions about Legitimacy to Investigate Counterfeiting, Authority Says the Police has the Responsibility [警方打假行动来质疑 相关部门:公安有单独打假权]," *Guangxi News*, May 22, 2006, *Sina*, <http://news.sina.com.cn/o/2006-05-22/10298992179s.shtml>; *Criminal Law of the People's Republic of China*, Volume 2 Chapter 3 Section 1 Article 140 (2011).

⁶² Weijian Zheng and Jiangping Fu, "Three Ways to Conquer Counterfeit Mailing [三招点中“邮”假“死穴”]," *China Quality News*, May 27, 2009, <http://www.cqn.com.cn/news/zgzlb/diliu/261441.html>.

Stage One: Building Regulatory Infrastructures (2006-2009)

The year 2006 marked the beginning of counterfeit regulation in China. A year before, the State Council released the *State Council's Opinions on Accelerating the Development of Electronic Commerce*, which called for developing regulations for the newly emerged but quickly expanding online commerce.⁶³ The MOFCOM responded by issuing the *Ministry of Commerce's Guidelines for Online Trading (Draft)*,⁶⁴ which were ratified as the *Ministry of Commerce's Guidelines for Online Trading (Temporary)* in 2007. The *Guidelines* provided an encompassing guide to the development of E-commerce in a wide range of areas. It defined the roles of the participants in online trading, the basic legal and moral principles they should abide by and brief but comprehensive rules covering areas of privacy, payment security, intellectual property, consumer protection etc. Although the *Guidelines* only required E-commerce participants to abide by the laws relevant to counterfeiting and respect intellectual property in the most general terms, it was a starting point of the government's attempt to regulate counterfeits on the C2C market.⁶⁵

Taobao also began to build its own forces against counterfeits in 2006 by establishing a Security Department. Like government regulation at this time, the Security Department oversaw a broad range of problems that threatened the security of transactions, accounts, and merchandise.⁶⁶ In the years that followed, the Security Department would grow into a sizable department in Taobao and would play important roles in Taobao's battle against counterfeits. The Security Department now contains several subdivisions, including Quality Control, Intellectual Property Protection, and Investigations. Specialists in the department investigate consumer complaints and patrol the website with special attention to stores with bad ratings and high return rates.⁶⁷

During the following years, Taobao has made greater progress in establishing its self-regulatory system. Taobao monitored the prices of the goods and automatically took down those with abnormally fluctuating price. By early 2009, it had an anti-counterfeit team of more than 50 specialists. Taobao also established counterfeit reporting channels for both brand owners and consumers. However, the ways it responded to the two types of complaints differed. If brand owners issued official claims against specific products, Taobao would immediately delist them. If consumers filed reports, Taobao would investigate and delist the product only if it could verify the claims.⁶⁸ The enforcement of the latter type, however, remains controversial even until today, as consumers often complain online about Taobao's lack of attention to their reports.⁶⁹

⁶³ The Central People's Government of the People's Republic of China, *State Council's Opinions on Accelerating the Development of Electronic Commerce* 《国务院办公厅关于加快电子商务发展的若干意见》(2005), retrieved from http://www.gov.cn/gongbao/content/2005/content_63341.htm.

⁶⁴ "MOFCOM Asking for Public Opinions on *Ministry of Commerce's Guidelines for Online Trading (Draft)* [商务部公开征求对《中华人民共和国商务部关于网上交易的指导意见》(征求意见稿)的意见]," *MOFCOM Department of Electronic Commerce and Informatization*, May 24, 2006, <http://xxhs.mofcom.gov.cn/aarticle/af/200605/20060502278471.html>. In China, government agencies sometimes release drafts of the policies to the public or certain groups before the policies are ratified in order to solicit public opinions and suggestions.

⁶⁵ MOFCOM, *Ministry of Commerce's Guidelines for Online Trading (Temporary)* 《商务部关于网上交易的指导意见(暂行)》(2007), retrieved from <http://www.mofcom.gov.cn/aarticle/b/g/200704/20070404603124.html>.

⁶⁶ Rouxi, "Introduction of Taobao's Security Department [淘宝安全部团队介绍]," *Taobao BBS*, August 22, 2012, <http://bbs.taobao.com/catalog/thread/154504-258749098.htm>.

⁶⁷ "Taobao Fighting Counterfeits [淘宝打假]," *Dalian News Web*, January 3, 2014, http://news.dlxww.com/news/content/2014-01/03/content_1232432.htm; Jing Xiao, "Taobao vs. Counterfeits, A Secret Battle Involving 2000 Specialists [2000 多人专业打假 淘宝 Vs 假货 一场你不知道的暗战]," *Zhejiang News*, January 2, 2014, <http://zjnews.zjol.com.cn/system/2014/01/02/019788668.shtml>.

⁶⁸ "Behind the Online Counterfeiting: A Battle between B2C and B2B Platforms [网络售假风波背后暗藏与 C2C 平台之争]," *Net Ease*, February 19, 2009, *China Market Order*, http://www.12312.gov.cn/article/fangfan/anli/200902/1463156_1.html.

⁶⁹ These two conversation threads in online forums, *Taobao BBS* and *Deyi*, are samples of consumer complaints about Taobao's inaction toward their reports: <http://bbs.taobao.com/catalog/thread/154501-265616739--1636482543.htm>; <http://www.deyi.com/thread-4685371-1-1.html>.

In 2008, Taobao opened up a business-to-consumer (B2C) website, first known as Taobao Mall and later as Tmall.⁷⁰ This new site, easily accessible through Taobao, offered brand owners a platform to open up official stores. Other sellers could also open up stores on Tmall, so long as they could meet Tmall's financial and quality standards. The establishment of Tmall constituted an important move in Taobao's approach to counterfeit regulation. The site required that all products listed to be authentic, and it imposed more stringent regulations than Taobao.⁷¹ Through the establishment of Tmall, Taobao drew an explicit distinction between the two markets—one with low cost of entry but higher risk for quality, and another with high cost of entry but lower risk for quality.⁷² Through Tmall, Taobao could appease discontented brand owners by allowing them and their authorized retailers to compete with individual sellers on Taobao. With its strict quality requirement, Tmall also reduced the information asymmetry between sellers and buyers, offering consumers a channel to purchase guaranteed authentic goods.

By 2009, Taobao also developed several preventative mechanisms against counterfeit selling. It mandated all sellers to register with authenticated national IDs. The system would blacklist the IDs of sellers who were found selling counterfeits, preventing them from opening another store on Taobao for years or even permanently. Taobao also implemented consumer protection policies that discouraged illicit selling. For instance, if consumers lodged complaints against sellers, the sellers had the burden to prove the invalidity of the claims. To the sellers who had joined a voluntary consumer protection program, Taobao had the right to issue buyers refunds worth three times the original price with funds from the sellers' escrow account.⁷³

Despite these various internal regulatory efforts, counterfeit selling still remained prevalent on Taobao, leading some consumer activists to pressure Taobao to further strengthen its regulation. In November 2009, an online activist and CEO of a public relation company, Huang Xiangru, founded an anti-online counterfeit organization named "Internet Counterfeit Fighters" and called for consumers, businesses, lawyers and government officials to join him in boycotting Taobao and other websites that sold counterfeits. According to Huang, the organization received 7000 consumer complaints and filed complaint letters representing the French fashion company, Pierre Cardin, during the first three months of 2010.⁷⁴ However, some Chinese commentators questioned the organization and criticized it for excessive propaganda and little substantial work.⁷⁵ Huang might also have been operating primarily as a local front for foreign brand manufacturers. Nonetheless, this activist, at the very least, contributed to raising public awareness of online counterfeiting and alerting C2C platforms like Taobao.

Possibly stimulated by the growing domestic pressure, during the same month "Internet Counterfeit Fighters" was founded, Taobao announced its "100 Million Anti-Counterfeit Plan," according to which Taobao would invest 100 million RMB (approximately \$16 million) into

⁷⁰ Jing Hu "Tmall Tops the Rank of B2C Platforms Three Years Since Founding [淘宝商城成立3周年稳坐B2C第一平台]," *Xin Wen Hua News*, April 13, 2011, *Hexun*, <http://tech.hexun.com/2011-04-13/128709644.html>.

⁷¹ "Tmall Rules [天猫规则]," *Tmall*, last modified October 10, 2014, <http://rule.tmall.com/tdetail-146.htm?spm=0.0.0.0.pLPPGm&tag=self>.

⁷² Benli, "A Look at How Taobao Fights Counterfeits [看淘宝如何打假]," *NetEase*, March 2, 2011, <http://tech.163.com/11/0302/08/6U4LK4L000094K1G.html>.

⁷³ "Behind the Online Counterfeiting: A Battle between B2C and B2B Platforms," "Introduction to Consumer Protection Service [消费者保障服务介绍]," *Taobao Service Center*, last modified September 18, 2014, <http://service.taobao.com/support/seller/knowledge-1115307.htm>.

⁷⁴ "Two Counterfeit Fighters Turned to Online Counterfeits on Taobao [两大打假人物交锋网络假货 矛头指向淘宝]," *BJ News*, March 15, 2010, *Tencent*, <http://tech.qq.com/a/20100315/000083.htm>.

⁷⁵ "Internet Counterfeit Fighters Did Nothing in Its First Month, Internet Users Question Huang's Purpose [网购打假团成立一月业绩为零 网友质疑黄相如打假目的为赚钱]," *Qingdao News*, December 19, 2009, http://www.qingdaonews.com/content/2009-12/09/content_8230481.htm.

anti-counterfeiting operations that it promised to encompass all stakeholders.⁷⁶ It also established an official anti-counterfeiting email account to receive consumer letters.⁷⁷ The plan had an immediate impact. By the end of December, the email account had received 462 letters, approximately 30 percent of which were counterfeit disputes. Well-known brands such as Mary Kay also provided information about counterfeits to Taobao.⁷⁸

While Taobao established a new system of self-regulation, government officials in the MOFCOM were paying substantial attention to the legal frameworks and the limits of government regulation. In 2008, the MOFCOM released the *Specification for E-Business Model (Draft)* and the *Service Specification for Online Shopping Transactions (Draft)*. Although like the previous MOFCOM *Guidelines*, the two *Specifications* covered a broad range of issues, they specified in much greater detail the obligations of E-commerce with regard to sale of counterfeit wares. Both *Specifications* contained detailed stipulations requiring that all C2C online commerce participants, which include sellers and service providers like Taobao, abide by relevant trademark, copyrights, and consumer protection laws, protect intellectual property, and list correct information and advertise accurately. They also required service providers to record the sellers' IDs, provide channels for dispute resolution and monitor for potential transgressions, such as abnormal prices. They further prohibited online service providers from permitting illicit trade.⁷⁹

This national regulation was matched by action at the municipal level, as the Beijing Administration for Industry and Commerce (BAIC), a municipal administration of the SAIC, simultaneously went about testing the limits for government regulation. Since 2007, as E-commerce and online counterfeit trading burgeoned, local AICs strengthened their supervisions on online stores. In 2008, the BAIC tested the water of administrative regulation against online counterfeits by issuing the *Opinions on Implementing the Rules of Promoting Informatization in Beijing and Strengthening Regulations of Electronic Commerce*. The *Rules of Promoting Informatization in Beijing* would require online sellers to register for an industrial and commercial business license, which all offline business owners had to do.⁸⁰ The requirement was met with sweeping opposition from the E-commerce industry. Opponents argued that the requirement would undermine the flexibility and openness of online commerce, and would ultimately impair the development of this new market.⁸¹

As a result of this vehement opposition, the BAIC eventually gave up on the requirement, thus failed to implement the *Rules*. Nonetheless, in response to the unchecked growth of counterfeits on the C2C market, the BAIC formally took the regulation of online counterfeits

⁷⁶ Xi Cui, "Taobao Planning to Spend 100 Million on Fighting Counterfeits [淘宝计划投入 1 亿元展开打假行动]," *Sina*, November 18, 2009, <http://tech.sina.com.cn/i/2009-11-18/15443604072.shtml>.

⁷⁷ Xiangru Huang, "Taobao's Anti-Counterfeiting Achievements are Admirable [淘宝网的打假成绩令人佩服]," *iResearch*, June 14, 2010, <http://column.iresearch.cn/u/royhuang/294797.shtml>.

⁷⁸ "Taobao Releases Result of Its First Month of Anti-counterfeiting Plan, Receiving 462 Complaints in Total [淘宝公布一个月打假结果共接到 462 封举报信]," *Sohu IT*, December 25, 2009, *Working Platform for Business Integrity*,

http://city.12312.gov.cn/article/cityjxxx/cityzh/200912/1659448_1.html?COLLCC=707011945&COLLCC=1751567817&COLLCC=78599943&

⁷⁹ MOFCOM, *Specification for E-Business Model (Draft)* 《电子商务模式规范（征求意见稿）》（2008） and *Service Specification for Online Shopping Transactions (Draft)* 《网络购物服务规范（征求意见稿）》（2008），retrieved from http://www.gov.cn/gzdt/2008-04/28/content_956293_2.htm.

⁸⁰ BAIC, *Opinions on Implementing the Rules of Promoting Informatization in Beijing and Strengthening Regulations of Electronic Commerce* 《关于贯彻落实〈北京市信息化促进条例〉加强电子商务监督管理》（2008），retrieved from <http://tech.sina.com.cn/other/2008-07-21/10382339669.shtml>.

⁸¹ "How Do Policies Regulate Anti-counterfeiting Effort on the Three Biggest C2C Platforms [政策如何约束 C2C 三大平台打假措施]," *China B2B Research Center*, February 9, 2009, *China Market Order*, http://www.12312.gov.cn/article/fangfan/weiquan/200902/1549263_1.html?COLLCC=707714444&COLLCC=78599943&.

under its wings in 2009.⁸² The BAIC's failure to enforce the *Rules* and its subsequent move bore special significance in the government's early attempts to regulate the C2C market. The failure was one of the earliest demonstrations of the conflict between government regulation and business interests. The lesson was that traditional regulatory tactics, such as formal licensing, no longer worked with the novel commercial relationships created by the new technology. Thus, the BAIC's failure might account for why, in the years to come, the government never attempted to impose similar gatekeeping restrictions on individual sellers in the marketplace.

Stage Two: Campaigning Against Counterfeits—From Toothless Guidelines to Greater Enforcement (2010-2012)

The year 2010 witnessed an important increase in the regulatory enforcement against C2C counterfeits. Building on the 2009 "100 Million Anti-Counterfeit Plan," Taobao announced in early January that the year 2010 would be Taobao's Consumer Year, thus identifying consumer protection Taobao's priority of the year. But unlike the previous plan, Taobao's consumer protection campaign in 2010 encompassed a much broader range of activities that hurt consumer interests, including late shipments and deceptions besides counterfeit goods. Taobao's CEO Lu Zhaoxi explained that the Consumer Year was a response to consumer demand—as consumers became more rights-aware, Taobao needed to protect their rights well in order to secure its share in the C2C market.⁸³ Part of the Plan was to establish a 100 million RMB consumer protection fund. If consumers had problems with their purchase, Taobao would use the fund to offer consumers compensation.⁸⁴ Nonetheless, though Taobao's establishment of the fund seemed to be a generous move, the fund only constituted around 0.05 percent of Taobao's gross merchandise volume of 195.1 billion RMB in the previous year.⁸⁵

On March 8th, a week before China's official Consumer Protection Day, Taobao launched its consumer rights protection platform, the first business-owned E-commerce consumer protection platform in China. Through the platform, consumers would be able to file and keep track of inquiries on their purchases, which Taobao required the sellers to respond to within 48 hours. If the sellers failed to meet the time limit, Taobao would intervene.⁸⁶ The platform also furnished detailed information about rights-infringing sellers.⁸⁷ In the days surrounding March 15th, the national Consumer Protection Day, Taobao also intensively publicized its efforts and resolution in fighting counterfeits through advertisements that featured the slogan, "if you dare to buy, I dare to recompense for you loss" on CCTV, the main state television network.⁸⁸

Taobao's anti-counterfeiting campaign in early 2010 signaled the marketplace's attempt to appease both consumers and the government. By framing the campaign around consumer protection, Taobao most likely hoped to demonstrate its resolution to serve the interest of the

⁸² Ibid.

⁸³ Zhouyuan Duan, "Taobao: 2010 Set as Consumer Year [淘宝网: 2010 年为淘宝消费者年]," *Zhejiang Market Guide*, January 12, 2010, *Tencent*, <http://finance.qq.com/a/20100112/006148.htm>.

⁸⁴ "Taobao Strengthens Efforts to Clean Up Online Commerce [淘宝网大力打假净化网络商务环境]," *Xinhua News*, March 14, 2010, *Net Ease*, <http://money.163.com/10/0314/15/61OCFNF000253B0H.html>.

⁸⁵ Dick Wei and Evan Zhou, "China eCommerce," 30.

⁸⁶ Zhouyuan Duan, "Taobao: 2010 Set as Consumer Year."

⁸⁷ Wen Zhao, "Taobao Launches Consumer Protection Platform, Declaring War on Counterfeits in Coordination with Brands [淘宝消费者维权平台上线联合品牌商宣战假货]," *Securities Daily*, March 9, 2010, *Net Ease*, <http://money.163.com/10/0309/09/61ATF9JK00253B0H.html>; "Taobao Strengthens Efforts to Clean Up Online Commerce."

⁸⁸ Xiangru Huang, "Taobao's Anti-Counterfeiting Achievements are Admirable."

consumers who were hurt by counterfeits. Its intensified publicity effort surrounding the days of the national Consumer Protection Day possibly served an even broader agenda. Every year on Consumer Protection Day, CCTV, directed by the government, would expose businesses that infringed consumer rights and welfare on its evening gala viewed by audiences across the country. By advertising intensively on CCTV, Taobao might well intend to appease the government and the official broadcast to fortify itself against exposure.

Taobao also strengthened its efforts to cooperate with brand name companies. On March 8th, 2010, Taobao allied with over 20 brand owners including Adidas and Victorinox and published the *Hangzhou Declaration of Combating Counterfeits*, which called for all participants in the online market to unite against the online sale of spurious goods.⁸⁹ It also established multiple enforcement mechanisms against counterfeits. First, through an algorithm based on a standard price database, the website would now automatically detect and delist abnormally priced products. Second, it hired specialists to inspect the marketplace and take down products manually. Third, consumers could now also report infringing products by simply clicking the report button on the product page. Last but not least, Taobao hired a team of over 2400 volunteers, whom were non-Taobao employees and consisted partly of college students. They, upon request, would make purchases of suspected counterfeit products and hand them over for authentication. In the second half of 2011, the volunteers had dealt with approximately 0.53 million pieces of counterfeits.⁹⁰

However, these strengthened enforcement mechanisms also generated side effects that hit legitimate sellers. The price filtering system, which was preprogrammed and automatic, sometimes mistook discounted genuine goods as counterfeits. For instance, in 2010, Taobao falsely removed a genuine cosmetic product sold by Chen, because the product was priced at 68 RMB, 1 RMB lower than the standard 69 RMB price indexed in the price filtering system. It took Taobao a month to correct its mistake, causing disruption to Chen's legitimate business.⁹¹

While Taobao launched private campaigns against counterfeits on its website, the Chinese government prepared its own battle against counterfeits as part of a broader campaign against intellectual property infringement. This new policy direction reflected the growing demand from domestic businesses for stronger intellectual property enforcement, as recognized by the vice director of SIPO in his 2012 speech.⁹² All of the enforcement actions against online counterfeits targeted individual sellers rather than the marketplaces like Taobao. Both of these

⁸⁹ "Taobao Strengthens Efforts to Clean Up Online Commerce;" "Taobao Cooperates with Over 20 Brand Manufacturers and Retailers to Release the *Hangzhou Declaration of Combating Counterfeits* [淘宝联合 20 余厂商 共同发布《网络打假杭州宣言》]," *CNET News*, March 8, 2010, <http://www.cnetnews.com.cn/2010/0308/1655378.shtml>.

⁹⁰ Ting Wang and Xuehong Guo, "Taobao Continues to Invest 200 Million into Consumer Protection Fund [淘宝今年继续投入两亿消费者保障基金]," *Hangzhou Daily*, March 1, 2011, http://hzdaily.hangzhou.com.cn/mrsb/html/2011-03/01/content_1024343.htm; <http://it.sohu.com/20120312/n337486100.shtml>; "Online Shopping Mentioned in the Annual Government Report, Anti- Online Counterfeiting Turned Into Heated Discussion [网络购物首次进入政府工作报告 网络打假引热议]," *Zhejiang Legal News Online*, March 10, 2011, *Sina Henan*, <http://henan.sina.com.cn/finance/y/2011-03-10/139-18166.html>; Fenglei Lin, "Uncover the Mystery of Taobao's Anti-Counterfeiting Team: Report to Ma Yun and Act as Mystery Shopper [揭秘淘宝打假部门:向马云汇报 化身神秘买家买货]," *Sohu IT*, March 12, 2012, <http://it.sohu.com/20120312/n337486100.shtml>; Zhejiang Institute of Technology Student Volunteer Association "Taobao Recruiting Anti-counterfeiting Volunteers [淘宝网打假志愿者招募活动]," *Zhejiang Institute of Technology Student Volunteer Association Blog (Blog)*, March 21, 2012 (17:53:25), http://blog.sina.com.cn/s/blog_6cbb9f3501011a4r.html.

⁹¹ "Taobao Took Down Legitimate Goods [淘宝网 销售真货店铺也遭遇被强行下架]," *Hangzhou Web*, April 20, 2010, http://ori.hangzhou.com.cn/ornews/content/2010-04/20/content_3239210.htm. Many sellers have complained about Taobao's automated take-down system in venues like online forums. However, it is difficult to discern the legitimacy of those sellers through their own words, which, not surprisingly, claimed that they were legitimate.

⁹² Trevor Little, "The Chinese companies pushing the brand boundaries," *World Trademark Review*, December 3, 2012, <http://www.worldtrademarkreview.com/Blog/detail.aspx?g=07cf20d7-7e45-4f4a-9fda-1b1483ec9d68>.

characteristics were consistent with the government's focus on nurturing domestic economic growth as it went about enforcing intellectual property rights protection.

One important departure in government regulation toward online counterfeits occurred in June 2010, when the SAIC issued the *Temporary Regulations of Online Commodity Transaction and Services*. This document differed from those issued by the MOFCOM in that it formally defined the responsibilities of government regulators, online sellers and online service providers. As the major government market regulators, the AICs had the responsibility of monitoring businesses and sanctioning the firms that violated the *Regulations*. The *Regulations* also specified that online sellers must abide by the *Trademark Law*, *Product Quality Law*, *Consumer Protection Law*, *Anti-Unfair Competition Law*, and *Provisions on Administration of Enterprise Name Registration*. It further commanded service providers to report infringing activities to the AICs and cooperate with the AICs when they discovered infringing activities on the service platforms, deepening the integration of private and public regulatory frameworks. The *Regulations* also defined lower-level AICs' jurisdictions of e-commerce regulation.⁹³

More stringent rules were accompanied by at least a show of tougher enforcement. In October 2010, the State Council launched the Special Operation against Intellectual Property Infringement and the Production and Sales of Counterfeits. The six-month long operation would shape government enforcement in the years to come. According to the State Council's official announcement, the purpose of the operation was to lead the executive agencies to intensify regulation against counterfeits and intellectual property rights infringing activities, the unchecked growth of which "would interrupt market economy, undermine business competitiveness and innovations, and impair China's international reputation."⁹⁴ The Operation called for both horizontal and vertical cooperation of the government agencies—cooperation horizontally among nine ministerial executive agencies and vertically between central and local enforcement agencies. The State Council established a Leadership Committee, located in the MOFCOM, to lead and supervise the Operation. Although the Operation spanned intellectual property infringements in different sectors, the State Council specifically mentioned online counterfeits and infringing activities as their important targets.⁹⁵

One of the most prominent responses to the State Council's Special Operation was the Sword Action against Intellectual Property Infringement and Counterfeits launched by the MPS in November 2010, and extending throughout 2011. Like the State Council's Special Operation, the Sword Action broadly targeted intellectual property infringements, but listed online counterfeiting as one important focus.⁹⁶ This campaign could point to significant achievements. For instance, in Suzhou, a city near Shanghai, the police confiscated over 400,000 infringing goods during the first five months of the Action. Having discovered that many offline counterfeit vendors either purchased their goods on Taobao or had their own stores on Taobao, the Suzhou police placed particular attention on monitoring Taobao stores that distributed goods from Suzhou.⁹⁷

⁹³ SAIC, *Temporary Regulations of Online Commodity Transaction and Services* 《网络商品交易及有关服务行为管理暂行办法》(2010), retrieved from http://www.saic.gov.cn/ywdt/gsyw/zjyw/xxb/201006/t20100601_88891.html.

⁹⁴ The State Council, *The Plan for the Special Operation against Intellectual Property Infringement and the Production and Sales of Counterfeits* 《打击侵犯知识产权和制售假冒伪劣商品专项行动方案》(2010), retrieved from <http://ip.people.com.cn/GB/13232401.html>.

⁹⁵ Ibid.

⁹⁶ "The MPS Launched the Sword Action Against the Production and Sales of Counterfeits [公安部部署“亮剑”行动打击制假售假]," *Ministry of Public Security*, September 10, 2011, *Tencent*, <http://news.qq.com/a/20110910/000485.htm>.

⁹⁷ "Suzhou Confiscated Counterfeits Worth 160 Million Yuan Five Months After it Joined the Sword Action [苏州“亮剑”5个月 清缴假名牌货值 1.6 亿]," *Suzhou Daily*, April 1, 2011, *China Market Order*, http://www.12312.gov.cn/article/zonghe/difang/201104/1421242_1.html?COLLCC=720469569&COLLCC=625093809&COLLCC=78599943&

As individual agencies launched their own enforcement projects, nine ministerial agencies announced an additional intensive, cooperative enforcement action against online counterfeit sales. The nine agencies included the MOFCOM, the Ministry of Industry and Information Technology (MIIT), the MPS, the People's Bank of China (PBC), the General Administration of Customs (GACC), SAIC, AQSIQ, SIPO, and the State Administration of Press, Publication, Radio, Film, and Television (GAPP). Through this program, the agencies aimed to strengthen online counterfeit inspections and investigations, and clarified the responsibilities of each jurisdiction. Government agencies also urged C2C platforms such as Taobao to implement more stringent self-regulation, especially in southeastern regions where sellers concentrated. They also threatened to close down online platforms where infringements prevailed.⁹⁸

As local institutions closest to the physical operations of online businesses, AICs played a pivotal role in the government's battle against online counterfeits. In 2010, the SAIC launched an online platform, which consisted of a search engine and an online database, to supervise online transactions. With the platform, the SAIC hoped to build up a nation-wide information network for illicit online transactions, promote greater information sharing with other enforcement agencies, consumers, and commercial websites and eventually pressure E-commerce websites for more stringent self-regulation. The SAIC picked 10 provincial AICs to try out the platform; by 2012, fourteen provincial AICs and 4 municipal AICs had built up interconnected online platforms on their own.⁹⁹

The AICs also cooperated with other agencies to combat online counterfeits. In April 2011, led by the Leadership Committee of the State Council's Special Operation and in cooperation with the MOFCOM, the SAIC dispatched an inspection team to deal with online counterfeits in Shandong and Guangdong Provinces. Seizing shipment and accounting records as evidence for illegal activities, the inspection team closed down a number of Taobao and EachNet counterfeit stores. It confiscated more than 12,800 infringing products, including knockoffs of international luxury brands such as Burberry and Chanel.¹⁰⁰

The AICs continued its targeted enforcement actions after the Special Operation had ended. In 2012, the SAIC launched a specialized operation against online counterfeits, during which it required provincial and local AICs to target enforcement on stores that sold products of categories or brands particularly vulnerable to counterfeiting. It required lower-level AICs to locate suspicious stores and vulnerable products through both online searches and offline inspections, and to frequently inspect and monitor E-commerce platforms and stores with physical addresses in their jurisdictions.¹⁰¹ In 2014, the SAIC launched another specialized operation against online counterfeits, the Red Shield Action. Similar to the one in 2012, this operation, also enforced by lower-level AICs, targeted large online transaction platforms and categories of goods that were especially vulnerable to counterfeiting. However, the Red Shield Action differed from the earlier operation in that the service platforms played a more significant role. Government regulation relied more heavily on the data provided by the platforms, and the

⁹⁸ "China Daily: Online Shopping Plagued by Infringing Activities."

⁹⁹ "Summary of AICs' Establishment of the Nation-wide Online Shopping Supervision System [工商机关推进全国一体网购监管系统建设综述]," *China Industry and Commerce News*, December 19, 2012, SAIC, http://www.saic.gov.cn/ywdt/gsyw/zjyw/xxb/201212/t20121219_132048.html.

¹⁰⁰ "MOFCOM and SAIC Cooperate in Online IP Infringement and Counterfeiting Cases [商务部、工商总局联合查处一批网络购物领域侵犯知识产权和制售假冒伪劣商品重点案件]," *MOFCOM*, April 6, 2011, <http://www.mofcom.gov.cn/aarticle/ae/ai/201104/20110407483998.html>.

¹⁰¹ SAIC, *Notice of the Specialized Operation Against Online Counterfeits* 《关于集中开展打击利用互联网销售假冒伪劣商品专项行动的通知》(2012), retrieved from http://www.saic.gov.cn/scs/wljg/201208/t20120821_128763.html.

AICs explicitly demanded cooperation and stronger self-regulations from service providers.¹⁰² This shift in the role of service providers reflected the trend of increasing cooperation between service platforms and the government that had occurred since 2012.

The AICs were not the only government enforcement agencies that had taken greater advantage of the marketplaces in online counterfeit regulation. The Quality and Technology Supervision Bureaus (QTSBs), the local enforcement agencies of AQSIQ, also utilized Taobao's service as they traced the producers of counterfeits. In 2012, the Wuhan QTSB received consumer complaints about a Taobao vendor selling fake cell phone batteries, a type of product far more likely to elicit concern from consumers, brand manufacturers and licensed dealers. The contact information in Taobao's return system enabled the QTSB to locate the physical address of the fake battery seller and to ultimately raid the illicit battery producer.¹⁰³

Stage Three: Increased Cooperation and Strengthened Self-regulation—Moving toward a Co-regulation Paradigm and Paving the Way for IPO (2012-2014)

Before 2012, the government and Taobao carried out regulation mostly on separate tracks. However, since 2012, government agencies and Taobao have significantly increased cooperation in their attempts to reduce online counterfeits. In 2012, Alibaba reported infringements of more than 72 brands to the police, enabling the police to arrest 324 suspects and pursue legal cases involving 170 million RMB.¹⁰⁴ Taobao and the government further strengthened collaboration in the following year. In March, Taobao, cooperating with governmental quality inspection services, introduced a third party quality authentication service. This service enabled cell phone and camera buyers, a group of consumers exceptionally mindful of counterfeits, to have their merchandise inspected by expert third parties. If an inspector proved that the merchandise was fake, Taobao would issue the buyer an advance refund before investigating into the seller.¹⁰⁵ It is worth noting that in August, Taobao also significantly raised the guarantee deposit—the advance payment sellers were required to make to Taobao as a guarantee for the authenticity of their products—for cell phones from 1,000 RMB to 10,000 RMB.¹⁰⁶ In June, under the guidance of the MPS, Taobao collaborated with over 20 Chinese Internet companies, including its leading competitors, to share information about counterfeits and deceptive advertising.¹⁰⁷ The next year, Taobao coordinated with the MPS in an enforcement campaign against fake luxuries in eight

¹⁰² SAIC, *Notice of the Red Shield Online Specialized Operation 2014* 《工商总局关于开展 2014 红盾网剑专项行动的通知》(2014), retrieved from http://www.gov.cn/xinwen/2014-06/19/content_2703982.htm.

¹⁰³ “Wuhan Launched Battle Against Online Counterfeits, Tracking Down Counterfeit Sellers with Merchandise Return System [武汉打响网络打假第一枪: 退货揪出造假者],” *Hubei Daily*, February 21, 2012, *China Market Order*, http://www.12312.gov.cn/article/zonghe/difang/201202/1423254_1.html?COLLCC=898361560&COLLCC=103687570&COLLCC=112429114 &.

¹⁰⁴ “Ma Yun Addressing Counterfeits: Taobao is a Mirror for the Tainted Spots [马云打假: 淘宝像“镜子”会照出“麻子”在哪里],” *China Entrepreneur*, April 25, 2013, *China Market Order*, http://www.12312.gov.cn/article/fangfan/anli/201304/1749006_1.html?COLLCC=721012232&.

¹⁰⁵ Yun Li, “Taobao Trial Third Party Inspection Service to Fight Counterfeits [淘宝网试点第三方质量鉴定服务 意在打假],” *Sina Tech*, March 13, 2013, *China Webmaster*, <http://www.chinaz.com/biz/2013/0313/295676.shtml>.

¹⁰⁶ “Taobao Raises Threshold: Cell Phones Guarantee Deposit Raised Ten Times Higher to 10,000 Yuan [淘宝升门槛: 手机类目保证金涨 10 倍至万元],” *ebrun C2C*, July 5, 2013, <http://www.ebrun.com/20130705/77032.shtml>; Lulu Yilun Chen, “Alibaba Shakes Off Counterfeit Label Smoothing Path to U.S. IPO,” *Bloomberg*, March 18, 2014, <http://www.bloomberg.com/news/2014-03-18/alibaba-shakes-off-counterfeit-label-smoothing-path-to-u-s-ipo.html>.

¹⁰⁷ Juro Osawa, “Alibaba Strengthen Anti-Counterfeiting Efforts [阿里巴巴集团重拳“打假”加大伪劣商品打击力度],” *Wall Street Journal*, August 6, 2013, *Phoenix News*, http://tech.ifeng.com/internet/detail_2013_08/06/28308529_0.shtml.

regions, and attended a MOFCOM conference on anti-counterfeiting, during which businesses and service providers offered suggestions about how to improve enforcement efforts.¹⁰⁸

One explanation for this increased cooperation was that the new government regulations and statutes had increasingly placed the regulatory burden on service providers. In 2011, the MOFCOM released the draft of *Third-Party E-commerce Transaction Platform Service Regulations (Draft)*. The *Regulations* requested service providers to regulate vendors and protect consumers, without requiring them to report infringing activities to government enforcement agencies.¹⁰⁹ In 2013, the National People's Congress passed an amendment to the *Consumer Protection Law* that specifically addressed online marketplaces. First, the law stipulated consumers' right to regret, correspondingly the right to return any online purchases of new goods within seven days of purchase, with the exception of customized goods and food. Second, the law commanded that if online marketplaces could not provide consumers the accurate name, address and contact information of the infringing sellers, it would be obliged to compensate the consumers instead.¹¹⁰ In 2014, the SAIC finalized the *Temporary Regulations of Online Commodity Transaction and Services* and published the *Regulations of Online Trading*. Building on the foundation of the previous *Regulations*, these new mandates further detailed the obligations of sellers and service providers. It required AIC-registered sellers to display the registration on their webpages and service providers to record and verify the IDs of non AIC-registered sellers. The latter requirement could be viewed as largely a response to the amendment to the *Consumer Protection Law*. The *Regulations* also clarified the amount of fines AICs would collect in case of violations.¹¹¹

The amendment to the *Consumer Protection Law* placed significant new demands on Taobao's self-regulatory framework. By holding the marketplace liable for the sellers' misconducts in the case of incomplete information, the law effectively increased the burden of the marketplace to collect and confirm the sellers' identities. In response, Taobao updated its seller ID system by requesting more detailed information and verifying existing information. If Taobao could not verify the sellers' information, it would restrict or block their businesses. Taobao also required sellers, except for those legally exempted, to provide seven-day return service to the consumers.¹¹²

However, the seven-day return rule created tensions between legitimate sellers and Taobao. Legitimate sellers worried that the new requirements would leave room for buyers to make irresponsible or even malicious returns. The requirement for sellers to provide proof, often in the form of invoices, for the authenticity of the contested products also increased the burden of individual sellers, especially those who sold items that were part of their personal collections.¹¹³

¹⁰⁸ "Taobao Against Counterfeits [淘宝打假]," *Qianjiang News*, January 3, 2014, *Dalian News*, http://news.dlxww.com/news/content/2014-01/03/content_1232432.htm; "Office Against IPR Infringement and Counterfeiting Hosted Conference Discussing the Issue [打击侵权假冒办召开打击网络侵权假冒调研座谈会]," *Office of the National Leading Group on the Fight Against IPR Infringement and Counterfeiting*, March 12, 2014, <http://djqqjmb.mofcom.gov.cn/article/gzdt/201403/20140300514758.shtml>.

¹⁰⁹ MOFCOM, *Third-Party E-commerce Transaction Platform Service Regulations (Draft)* 《第三方电子商务交易平台服务规范（征求意见稿）》(2011), retrieved from http://www.gov.cn/gzdt/2011-02/24/content_1809821.htm.

¹¹⁰ Hong Jiang, "Four Highlights to the New *Consumer Protection Law*, Return Service Requirement Caught Consumer Attention [四大亮点完善消费维权 无理由退货等制度引消费者关注]," *Jiancha Daily*, October 28, 2013, *JCRB*, http://news.jcrb.com/jxsw/201310/t20131028_1233386.html.

¹¹¹ SAIC, *Regulations of Online Trading* 《网络交易管理办法》(2014), retrieved from http://gkml.saic.gov.cn/auto3743/auto3745/201402/t20140217_141847.htm.

¹¹² Kun Chen, "An Explanation of the New *Consumer Protection Law* Enacted in February [新消法淘宝全面解析, 马年2月启动!]," *Taobao BBS*, last modified March 13, 2014, <http://taobao.com/catalog/thread/16029511-265984735--258636.htm>.

¹¹³ Sneaker Fanzi, "Impact of the New *Consumer Protection Law* and Taobao's New Rules on Sellers and Buyers [带大家领略新消法和淘宝新规定的魅力 对买卖主体的影响]," *Hupu BBS*, March 15, 2014, <http://bbs.hupu.com/9081887.html>.

Some illicit sellers, meanwhile, came up with creative ways to evade the new rules. For instance, since Taobao's regulation allowed sellers of second-hand goods to either opt in or out of the seven-day return policy, some sellers simply labeled their goods as second-hand, though they would inform the customers in their product descriptions that the wares were in fact brand new.¹¹⁴

Illicit sellers found other ways to sidestep the ID registration system. Some cunning sellers registered for a number of storefronts using different IDs. In this way, if Taobao closed down their operating stores, they could transfer all of its business instantly to another storefront and ensure the continuance of their business. Some counterfeit sellers with especially successful businesses were unwilling to move to new storefronts and thus lose their existing consumer bases, and instead opted for "technological maneuvers" to keep their stores after running afoul of the authorities. For instance, one ex-counterfeit shoes seller revealed that, when Taobao threatened to close down their stores, some of his peers would purchase authentic shoes from authorized retailers and provide the invoices to Taobao as proofs for the authenticity of their products. As Taobao could not inspect the actual products, such maneuvers could often exonerate the sellers from Taobao's penalties.¹¹⁵

Taobao also kept on improving its information sharing channels, yet in doing so revealed Alibaba's differentiated intellectual property priorities in domestic and foreign markets. In 2012, Taobao launched an intellectual property protection platform, through which trademark owners could submit links to the infringing products and proofs for infringement to Taobao. Taobao would immediately take down the infringing products upon receipt of the notice.¹¹⁶ Taobao also updated its online exposure board, through which it released information about counterfeit sales to consumers.¹¹⁷ However, in dealing with brand owner complaints, Alibaba seemed to have responded more swiftly to foreign brand owners than to Chinese ones. While the Taobao portal was launched in 2012, Alibaba had launched a similar intellectual property protection portal, AliProtect, for foreign rights holders two years earlier. Through the portal, rights holders could file complaints against up to 200 rights-infringing listings at a time, and Alibaba would take down the listings upon validating the complaints. The portal was easily accessible through the homepage of Alibaba.com and AliExpress.com, the international B2B and C2C platforms of Alibaba's E-commerce empire. It also provided search tools to rights holders, enabling them to make customized searches for product listings.¹¹⁸

The Alibaba Group moved to institutionalize its efforts to protect brand owners in 2013, establishing the Intellectual Property Protection Group as a permanent department. By appointing Taobao's CEO Lu Zhaoxi as the chair of the department, Alibaba clearly wished to signal that the company attached a high priority to intellectual property protection. Continuing its increased collaboration with the government, Alibaba invited representatives from the MPS, AIC, AQSIQ, SIPO and GAPP to its press conference, where it announced the decision to establish the Group. During the conference, Alibaba further clarified the projected

¹¹⁴ "Counterfeit Sellers Come Up With Ways to Evade the New *Consumer Protection Law* [淘宝卖假货有新招！对付新消法卖家想尽办法]," *Beijing Business News*, June 11, 2014, *People.cn*, <http://sn.people.com.cn/n/2014/0611/c229804-21w398686.html>.

¹¹⁵ "Challenges to Adidas' Attempt to Fight Counterfeits on Taobao [运动品牌阿迪达斯在淘宝的打假困境]," *Zhongshang Qingbao Wang*, June 10, 2013, <http://www.askci.com/news/201306/10/1016475485233.shtml>.

¹¹⁶ Yongqiang Wang, "Adidas in Quagmire Fighting Counterfeits on Taobao: Knockoffs are Unstoppable [阿迪达斯淘宝打假陷囚徒困境：假货层出不穷]," *China Business Journal*, June 12, 2013, *Cyzone*, <http://www.cyzone.cn/a/20130612/242577.html>.

¹¹⁷ Li Li, "How Did Collective 'Prison Break' Take Place on Taobao's Anti-Counterfeiting System [淘宝'打假'体系如何被'越狱']," *China Business Journal*, March 16, 2013, *Net Ease*, <http://money.163.com/13/0316/03/8Q2C5LJO002526O3.html>.

¹¹⁸ Alibaba, *Alibaba.com IPR Protection Policy & Enforcement* (presentation), April 20, 2012, retrieved from <http://www.electronicretailing.org/eWeb/upload/AlibabaOverviewIPRProtectionPolicyEnforcement.pdf>.

transformation of its strategies to cooperate with the government—a shift “from post-incidence notification to timely communication, from notification to information sharing, and from temporary initiatives and agreement to embedded rules and regulations.”¹¹⁹

Although Taobao had been improving its anti-counterfeiting mechanisms and strengthening the enforcement over the years, its intensified self-regulation since 2012 played an especially important role in the company’s broader business scheme. During this period, Alibaba was garnering momentum for one of the biggest moves in the company’s history—the launching of an Initial Public Offering (IPO) of stock to deepen its capital base, secure the control of its Chinese owners, and extend its capacity to invest in technological infrastructure. For many years, Alibaba’s founder Ma Yun had been struggling to regain control of the Alibaba Group from Yahoo! Inc.. While Ma only owned 7.4 percent of Alibaba’s share, Yahoo! owned 40 percent in 2005 and by 2013, despite the decline, still owned more than 20 percent. In 2012, Ma Yun and Yahoo! reached an agreement, according to which Alibaba could buy back half of Yahoo!’s share if it went public before 2016.¹²⁰ Since then, Alibaba had begun its arduous preparation for the IPO. It originally sought to launch the IPO in Hong Kong, but its negotiation with the Hong Kong Stock Exchange broke up in the fall of 2013, due to a conflict between Hong Kong’s security laws and Alibaba’s pursuit to continue its partnership structure. After the failure in Hong Kong, Alibaba turned to New York for its IPO filing.¹²¹

To go public, especially in the US where its C2C website Taobao had once been listed as a “notorious market” by the government, Alibaba had to take on greater accountability for the counterfeits on its websites. US laws and culture treated intellectual property seriously, and many of the contested brands on Taobao were US-owned. To win the heart of US investors and regulators, Alibaba had to at least demonstrate its effort and sincerity to clean the house of its C2C online marketplaces. And Alibaba did—in fact, it impressed the Americans with some swift and forceful actions. For instance, when Innovative Watersports, an American company that sold inflatable floating pool toys, notified Alibaba of its discovery of counterfeit toys, Alibaba took down the seller within two days’ time.¹²² Actions of this kind impressed even American experts. Richard Last, a professor of retail marketing from the University of North Texas, acknowledged that Alibaba had taken “a much more aggressive stance than I’ve seen taken by U.S. marketplaces, including eBay.”¹²³ In May 2014, Alibaba further toughened up its anti-counterfeiting mechanisms by learning from its US counterpart eBay, accelerating Taobao’s product removal process and increasing Taobao’s capacity to delist counterfeits.¹²⁴

To further polish its reputation in the West, Alibaba also reached out to international organizations and European governments. In 2013, after a year of negotiation, Taobao signed an agreement with IACC. The agreement, according to IACC, had created a collaborative framework to address Taobao’s counterfeit problem.¹²⁵ In the early summer of 2014, Alibaba additionally signed MOUs with the governments of France and Italy, two countries known for

¹¹⁹ Feng Lei, “Alibaba Claims More Stringent Regulation of Counterfeits [阿里巴巴宣称将更严格打击假货],” *Sohu IT*, April 23, 2013, <http://it.sohu.com/20130423/n373726388.shtml>.

¹²⁰ Peng Wang, “Alibaba Abandons Hong Kong for US to Launch the Largest IPO [阿里巴巴弃港赴美 或成美国规模最大 IPO],” *Shanghai Securities News* March 24, 2014, *CNFOI*, <http://xg.stock.cnfol.com/xingyaoen/20140324/17359499.shtml>.

¹²¹ Enda Curran, “How Hong Kong Lost the Alibaba IPO,” *The Wall Street Journal*, March 15, 2014, <http://online.wsj.com/articles/SB10001424052702303546204579440820673013810>.

¹²² Paul Carsten and Deepa Seetharama, “Fighting fakes: ahead of IPO, Alibaba takes a tougher line,” *Reuters*, May 13, 2014, <http://www.reuters.com/article/2014/05/13/us-alibaba-group-counterfeits-idUSBREA4C09120140513>.

¹²³ *Ibid.*

¹²⁴ Sarah Drake, “Alibaba moves to cut e-commerce counterfeit goods ahead of IPO,” *Silicon Valley Business Journal*, May 15, 2014, <http://www.bizjournals.com/sanjose/news/2014/05/15/alibaba-moves-to-cut-counterfeit-e-commerce-goods.html>.

¹²⁵ IACC, “IACC and Taobao Marketplace Sign Agreement to Combat Counterfeiting Online,” *IACC*, August 15, 2013, <http://www.iacc.org/announcements/international-anticounterfeiting-coalition-and-taobao-marketplace-sign-agreement-to-combat-counterfe>.

their luxury industries. The MOUs aimed at encouraging French and Italian businesses to open up stores on Tmall, which would increase the accessibility of authentic French and Italian goods and presumably reduce the appeal of counterfeits on Taobao for at least some consumers.¹²⁶ In September, Alibaba announced its partnership with the China-Britain Business Council (CBCC), through which it would acquaint British companies with its anti-counterfeit system and strengthen its enforcement against fake British products.¹²⁷

The pursuit of the IPO was not the sole driving force for the anti-counterfeiting policies Taobao had carried out since 2012, and Alibaba never publicly acknowledged the connection between its intensified anti-counterfeiting effort and its pursuit of a US IPO. Nevertheless, sellers as well as Western media captured how Alibaba's IPO plan had created momentum for Taobao's counterfeit regulation. In an interview with Reuters, a counterfeit luxurious handbag seller told the interviewer that he felt Taobao's regulation had gradually become more stringent, and that 2013 was a particularly difficult year for counterfeit sellers because Taobao tightened its enforcement due to the IPO.¹²⁸ Western media, including major press such as *CNBC*, *Wall Street Journal*, and *Reuters*, covered Alibaba's anti-counterfeiting efforts intensively in the run-up 2014. The media, while acknowledging Alibaba's anti-counterfeiting achievements, explicitly connected them to the company's moves to list on the New York Stock Exchange.¹²⁹ Alibaba declined to comment on this purported link, with the excuse of exercising silence in its pre-IPO stage.¹³⁰

However, Alibaba's refusal to admit to the link between anti-counterfeiting and the pursuit of IPO in no way suggests the lack of such a link. Alibaba had exhibited full awareness of the risk counterfeiting posed to the success of its IPO. In July 2014, two months before Alibaba launched its IPO, Kering, the French producer of well-known luxurious brands such as Gucci and Yves Saint Laurent, filed a lawsuit in the US against Alibaba for selling counterfeits Kering goods on its websites, particularly Taobao. Worried that the lawsuit would taint its reputation and undermine its IPO, Alibaba responded quickly. By agreeing to cooperate with Kering and offering greater intellectual property protection to its brands, Alibaba successfully convinced Kering drop its suit in late August, right before the launch of IPO.¹³¹ In its filing to the US Securities and Exchange Commission, Alibaba also acknowledged the risks counterfeiting posed to its business development. It identified "allegations and lawsuits claiming that items listed on our marketplaces are pirated, counterfeit, or illegal" and "[accusations] of infringing intellectual property rights of third parties" as major risk factors.¹³²

¹²⁶ Invest in France Agency, "Government of France and Alibaba Group Join Forces To Enhance French Exports to China," *National Journal*, May 21, 2014, <http://www.nationaljournal.com/library/156359>; Tim Parry, "Alibaba Group Inks Agreement to Embrace Italian Businesses on Tmall," *Multichannel Merchant*, June 11, 2014, <http://multichannelmerchant.com/news/alibaba-group-inks-agreement-embrace-italian-businesses-tmall-11062014/#>.

¹²⁷ Yu Xiao, "Alibaba Cooperates with CBCC to Fight Counterfeits [阿里巴巴称将与英中贸易协会合作打击假货]," *Phoenix News*, http://tech.ifeng.com/a/20140903/40785876_0.shtml.

¹²⁸ "Fighting fakes: ahead of IPO."

¹²⁹ "Can Alibaba knock out knockoffs?," Osawa, "Alibaba Teams Up With U.K. Business Body to Fight Fakes," *The Wall Street Journal*, September 3, 2014, <http://blogs.wsj.com/digits/2014/09/03/alibaba-teams-up-with-u-k-business-body-to-fight-fakes/?KEYWORDS=Alibaba+counterfeit>; Cathy Chu, "Alibaba Expedites Action Against Fakes," *The Wall Street Journal*, May 14, 2014, <http://online.wsj.com/articles/alibaba-expedites-action-against-fakes-1400087667>; "Fighting fakes: ahead of IPO."

¹³⁰ "Fighting fakes: ahead of IPO."

¹³¹ "DOES ALIBABA'S IPO MEAN NO MORE FAKE LUXURY GOODS? PROBABLY NOT.," *Jing Daily*, September 8, 2014, <http://jingdaily.com/does-alibabas-ipo-mean-no-more-fake-luxury-goods-probably-not/>; Cathy Chu, "Suit Against Alibaba Opens Window on Issue of Counterfeiting—Suit Against Alibaba Opens Window on Issue of Counterfeiting," *The Wall Street Journal*, August 10, 2014, <http://online.wsj.com/articles/suit-against-alibaba-opens-window-on-counterfeiting-allegations-1407714242>.

¹³² *Registration Statement-Alibaba Group Holding Limited*, filed for SEC on May 6, 2014: 30, 33.

VI. Achievements and Limitations of Regulations Against C2C Counterfeits in China

Through internal regulatory enforcement and cooperation with rights holders and government enforcement agencies, Taobao managed to take down listings for counterfeits valued into the billions of renmibi. In 2010, Taobao claimed to have received intellectual property complaints on 18 million product listings, and subsequently taken down 14 million of them.¹³³ The number more than quadrupled in 2011, as Taobao claimed to have removed 63.2 million infringing product listings, of which 8.7 million were reported by rights holders and 54 million were discovered as a result of Taobao's self-inspection.¹³⁴ In 2012, Taobao reported that it removed 94 million rights infringing listings, which constituted almost ten percent of its total product listings.¹³⁵ In the first two quarters of 2013, it claimed to have penalized 420,000 counterfeit sellers through active policing. As it strengthened cooperation with both government enforcement agencies and rights holders, it assisted the police with seven cases and penalized 60,000 rights infringing sellers through collaboration with brand owners.¹³⁶

Taobao's regulatory efforts also gained international recognition. While the USTR had listed Taobao as a "notorious market" in December, 2011, it removed Taobao from the 2012 list, acknowledging that the marketplace "has undertaken notable efforts over the past year to work with rightholders directly or through their industry associations to clean up its site."¹³⁷ However, one should keep in mind that Alibaba had undertaken significant efforts to persuade the USTR to remove it from the list, going so far as to hire former USTR General Counsel James Mendenhall as its lobbyist. China's MOFCOM also formally expressed objection to the inclusion of Taobao on the list and as coincidental as it might be, the removal of Taobao from the list took place just one week before an annual bilateral trade meeting between the two countries.¹³⁸ Other recognitions Taobao earned included an acknowledgement from the Motion Picture Association of America, a long-time critic of Taobao's counterfeiting and piracy issues, in 2012.¹³⁹ A year later, the *World Trademark Review (WTR)* awarded Alibaba the *WTR* Industry Award for Taobao's effort to help brand owners address the counterfeits on the marketplace.¹⁴⁰

The Disputable Technical Defense

While Taobao and the government have cracked down on a significant number of counterfeits, counterfeit selling still remains a highly visible problem on Taobao. A quick search

¹³³ "Jin Jianhang from Alibaba: Taobao Processed 12 Million Complaints Last Year [阿里巴巴金建杭：去年淘宝受理投诉量达 1200 万]," *Sina Tech*, March 25, 2011, <http://tech.sina.com.cn/i/2011-03-25/13385331960.shtml>; Gang Wang, "Taobao Hurt by Counterfeits [淘宝网假货之伤]," *Time Weekly*, March 10, 2011, *Sina*, <http://finance.sina.com.cn/roll/20110310/07119503400.shtml>.

¹³⁴ "Taobao Removes Links to 60 Million Infringing Listings in 2011 [淘宝网 2011 年共删除侵权商品链接 6000 万条]," *DoNews*, March 12, 2012, *100EC*, <http://www.100ec.cn/detail--6027944.html>.

¹³⁵ "Alibaba Dealt with 94 Million Rights Infringing Listings [2012 年阿里巴巴侵权商品信息 9400 万条处罚]," *100ec*, April 25, 2013, <http://www.100ec.cn/detail--6096458.html>; Taobao press release, "Motion Picture Association."

¹³⁶ Xiangfei Ao, "Taobao Releases Stringent Rules Against Counterfeits, Threatening to Close Down Counterfeit Stores [淘宝发布最严打假规则 网店恶意售假将被直接关店]," *China Quality News*, July 26, 2013, *100EC*, <http://www.100ec.cn/detail--6114640.html>.

¹³⁷ "Out of Cycle Review of Notorious Market," December 13, 2012.

¹³⁸ Doug Palmer, "U.S. drops China's Taobao website from 'notorious' list," *Reuters*, December 13, 2012, <http://www.reuters.com/article/2012/12/13/net-us-usa-trade-piracy-idUSBRE8BC1IG20121213>.

¹³⁹ *Ibid.*

¹⁴⁰ Trevor Little, "A salute to the trademark industry leaders," *World Trademark Review*, May 13, 2014, <http://www.worldtrademarkreview.com/Blog/detail.aspx?g=84da0a3f-5ab4-4c90-9787-78da67d3d3e1>; "WTR Industry Awards 2014," *World Trademark Review* Issue 49, 33, <http://www.worldtrademarkreview.com/Magazine/Issue/49/Features/WTR-Industry-Awards-2014>.

of almost any widely known luxury brand, especially if using abbreviations or prevalent aliases, yields thousands of listings with extraordinarily low prices that make them highly likely, if not certainly, to be counterfeits.

C2C online marketplaces like Taobao and eBay have frequently used technical difficulties as excuses to shield themselves from the blame for prevalent listings of counterfeits and from the liability to actively police their marketplaces for intellectual property rights infringing products. Both theoretical and practical evidence support their claims of technical difficulties. Scholarly discussions of E-commerce counterfeit regulation have acknowledged of the technical challenge to both government regulation and marketplace self-regulation, posed mainly by the information asymmetry between the regulators and the sellers. Gaining access to sufficient information to monitor sellers' behaviors would certainly impose costs.¹⁴¹

Taobao's regulation in practice further attests to the technical challenges. In 2013, Alibaba's three Chinese retail websites—Taobao, Tmall and Juhuasuan, hosted a total of 11.3 billion transactions. These platforms had approximately 231 million active buyers and 8 million active sellers.¹⁴² The sheer volume of transactions and users made it very difficult for the marketplace to review the information of every transaction. Dealing with counterfeit complaints in such a huge marketplace was not an easy task either. By 2012, Taobao's Security Department employed approximately 2,000 personnel to deal with intellectual property infringing issues, and in the same year it removed 94 million rights infringing listings.¹⁴³ According to these data, each Security Department specialist, on average, had dealt with 47,000 infringing listings in a year and 129 listings per day. Given such a taxing workload, it seemed that without further expanding its Security Department, Taobao could barely have done any better in removing counterfeit listings on its site.

However, other facts raise questions about the validity of the technical defense. A quick search experiment of fake Tory Burch handbags shows how easy it is to discover counterfeit goods on Taobao. As Taobao relies on filtering keywords, such as brand names, in product descriptions to monitor potential infringements, illicit sellers have learned to evade Taobao's inspection by avoiding the use of complete brand names in their product descriptions.¹⁴⁴ For instance, sellers of counterfeit Tory Burch handbags often refer to their bags as "tb bag." A search of "Tory Burch bag" on Taobao yielded thousands of listings of bags mostly with prices of 1000 RMB (\$160) and above, the normal price range of authentic Tory Burch bags. A search of "tb bag", however, yielded Tory Burch-looking products mostly as cheap as a few hundred renminbi (approximately ranging from \$20 to \$100). While it is difficult to tell if a \$300 Tory Burch bag is authentic, a \$30 "Tory Burch Bag" almost labels itself as a knock-off.

¹⁴¹ Calkins et al., "Mineshafts on Treasure Island;".

¹⁴² Xi Cui, "Alibaba's Data Point: GMV Reached 248 Billion Dollars in 2013 [阿里数据要点:2013 年零售交易额 2480 亿美元]," *Sina Tech*, May 7, 2014, <http://tech.sina.com.cn/i/2014-05-07/05349363201.shtml>.

¹⁴³ "Uncover the Mystery of Taobao's Anti-Counterfeiting Team."

¹⁴⁴ Juro Osawa, "Alibaba Strengthen Anti-Counterfeiting Efforts."

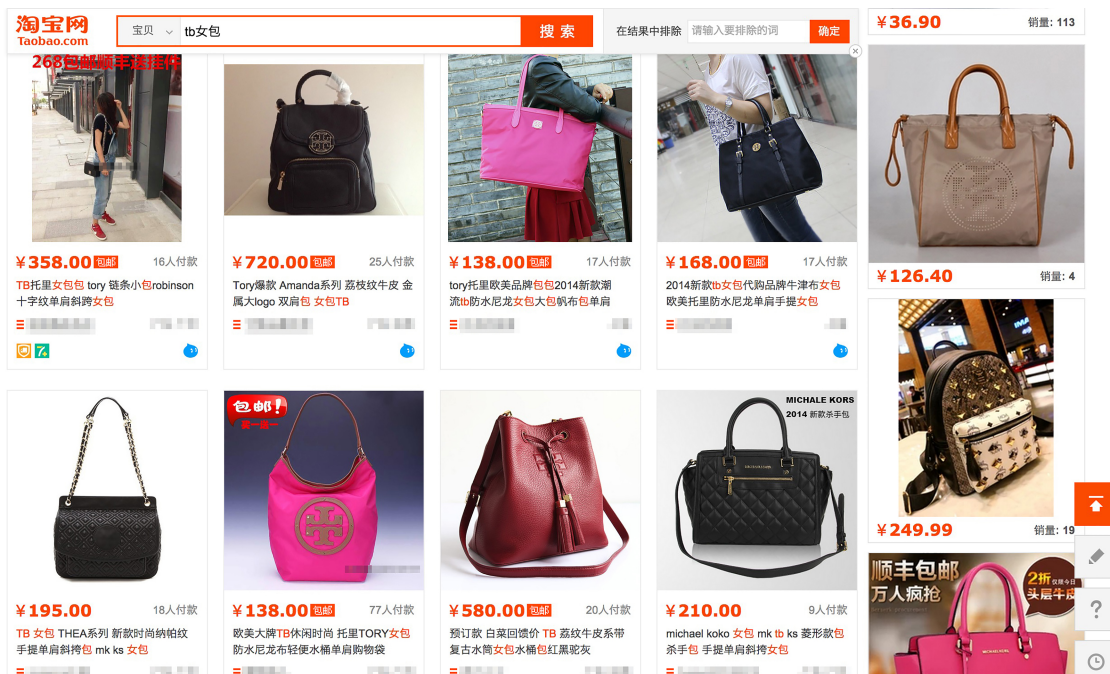


Figure 5: Screen Shot of the Partial Search Results of “tb handbag”

A search experiment using keywords “tb handbag” generated “Tory Burch,” “MCM,” and “Michael Kors” bags with prices ranging from approximately \$20 to \$120.¹⁴⁵

Even though it is difficult for Taobao to monitor every transaction or respond to every complaint, conducting quick searches and taking down abnormally priced counterfeit items demand little human resources. With its price-detection system that can automatically delist abnormally priced goods,¹⁴⁶ Taobao should be technically capable of filtering out and taking down counterfeits in massive volumes, especially if its enforcement teams scrutinize the widespread tactic of evading problematic search terms. The implicit question in the technical defense, therefore, seemed to be less about technical capability and more about the willingness to regulate.

Brand owners have raised similar critiques of Alibaba’s ability and willingness to take down counterfeits. A New York-based European beauty manufacturer, Coty, brought suit against Alibaba in Berlin in early 2014 for the selling of counterfeit Coty perfumes on AliExpress.com and Alibaba.com. A key question Coty raised during the process was the technical feasibility for Alibaba to operate software that could detect counterfeits on its site. The company further challenged Alibaba’s alleged active policing policy, citing its inaction toward the fake L’Oreal products listed on the same store that sold fake Coty products.¹⁴⁷ Such challenges to Taobao’s technical incapability further suggest that perceived business interests, rather than technologies, are the greatest barriers to effective regulation against counterfeits.

¹⁴⁵ Taobao.com product search page with search key words “tb hanbags,” http://s.taobao.com/search?isprepay=1&sort=renqi-desc&initiative_id=tbindexz_20141030&tab=all&q=tb%C5%AE%B0%FC&suggest=0_1&source=suggest, accessed 10:10 p.m. October 28, 2014.

¹⁴⁶ “Behind the Online Counterfeiting: A Battle between B2C and B2B Platforms.”

¹⁴⁷ “Coty-Alibaba dispute keeps host liability on trademark legal agenda,” *World Trademark Review*, April 7, 2014, <http://www.worldtrademarkreview.com/Blog/detail.aspx?g=62f037db-8f6a-4da8-bf52-1a4f0e56a0b2>.

The Flying Apple Tree—Regulatory Success or Failure?

A detailed consideration of an individual Taobao seller, *The Flying Apple Tree*, who has faced allegations of counterfeit selling, further suggests the regulatory complexity surrounding Chinese regulation of online counterfeit goods. The fall and revival of *The Flying Apple Tree* demonstrated the success of marketplace and government coordination, but also quite significant subsequent enforcement failures. Consumer reactions to the fall of the store also reflected how many consumers perceived online counterfeit luxuries and their sellers.

For several years, *The Flying Apple Tree* had been a successful store on Taobao. It sold counterfeit clothes and accessories of Western luxury brands. Although the store's products were much cheaper than genuine ones, they were substantially more expensive than the bulk of the counterfeit luxuries on Taobao. Denouncing the same but cheaper products sold by other sellers as low-quality knock-offs, Li boasted of the authenticity of her products and proudly attributed their cheapness to the "insider channels" which allowed her to acquire products directly from the Chinese producers. This selling strategy, which promised alleged genuine and high-quality luxury products at discounted prices, attracted many loyal customers and brought her financial success. Within six months after her store's opening in 2010, the store's revenue reached 20 million RMB (more than 3 million dollars).¹⁴⁸

The store's profitability came to a halt when, according to online rumors, a long-time client from Hong Kong reported the store to Taobao.¹⁴⁹ Based on the client's report, Taobao's Security Department investigated the store. The team analyzed its transaction data and, upon confirmation, reported the store to the police in Hangzhou, where the physical address of the store was located. The police confiscated Li's inventories in Hangzhou and coordinated with the Guangdong police, who busted several factories in Guangdong Province that manufactured counterfeit products for Li. As Li's revenue from selling counterfeits well exceeded the 50,000 RMB threshold in the *Criminal Law*, the police arrested her for trademark infringement and counterfeit selling.¹⁵⁰

The take-down of *The Flying Apple Tree* was a successful attempt of Taobao's self-regulation and police enforcement, as well as the voluntary cooperation between Taobao and government enforcement agencies. However, though Li had just been arrested in the winter of 2013, past customers of *The Flying Apple Tree* received text messages in the following spring from the store's customer service, which notified them that *The Flying Apple Tree* had moved its storefront to *Follow the Heart*. Past customers of *The Flying Apple Tree* speculated in an online forum about Li's whereabouts. Some argued that Li had been released without prosecution, while others disagreed and believed the store was taken over by Li's sister.¹⁵¹ There had been no official record of the aftermath of Li's arrest, yet the opening of *Follow the Heart* nonetheless confirmed Taobao's enforcement failure caused by a loophole inherent in Taobao's ID registration mechanism. Counterfeit sellers whose IDs were blocked by Taobao could easily

¹⁴⁸ "Would an Online Storeowner who Fly to Fashion Shows Sell Counterfeits [打“飞的”赶新品发布会的网店老板卖的奢侈品会是假货吗]," *Qianjiang News*, December 18, 2013, *Sina News*, <http://news.sina.com.cn/c/2013-12-18/081929015134.shtml>.

¹⁴⁹ "Taobao's *Flying Apple Tree* was Closed Down [淘宝上大名鼎鼎的“飞翔苹果树”家被封店了]," *Tianya BBS*, November 7, 2013, accessed September 10, 2014, <http://bbs.tianya.cn/post-funinfo-4747037-5.shtml>.

¹⁵⁰ "Would an Online Storeowner who Fly to Fashion Shows Sell Counterfeits"; "27-year-old Taobao's Crown Seller from Hangzhou Arrested on Two Charges [杭州 27 岁淘宝三皇冠女卖家涉嫌两项罪名被批捕]," *Hangzhou Daily*, December 18, 2013, http://hzdaily.hangzhou.com.cn/dskb/html/2013-12/18/content_1641260.htm; "Young Female Clothing Seller Flew Abroad Every Season to Copy Design, 'Hunger Strategy' Enchanted Buyers [85 后女店主每季都飞国外“进修”“饥饿销售”让买家深信不疑]," *Zhejiang News*, December 18, 2013, <http://zjnews.zjol.com.cn/system/2013/12/18/019764600.shtml>.

¹⁵¹ For consumers' online discussion about *The Flying Apple Tree*, see the conversation thread on *Tianya BBS* at <http://bbs.tianya.cn/post-funinfo-4747037-1.shtml>.

evade the rule by registering for another storefront using someone else's ID, such as a relative's. Therefore, in this case, regardless of whether Li was released or not, she or others could easily continue the business of *The Flying Apple Tree* by registering a new store with another ID.

The business revival of *The Flying Apple Tree* demonstrated the challenges Taobao faced in combating counterfeits. With Taobao's existing enforcement mechanisms, it would only discover the new store if it ran a key word search to filter suspicious products, or if consumers or brand owners filed a claim.¹⁵² Both channels, however, were very limited in this case. First, product descriptions on both *The Flying Apple Tree* and *Follow the Heart* avoided directly referring to the brand names the products were mimicking. Instead, they would use alias and abbreviations to hint the customers, such as referring "Burberry" as "B brand" or "Chanel" as "Miss C." Second, customers of the stores were often conscious of the fact that the products were, or highly likely to be, knock-offs but still made their purchase for the low price. According to online rumors, *The Flying Apple Tree* was reported by a customer not because of the customer's objection to counterfeits but rather a personal falling out with the storeowner.¹⁵³ When the police contacted some customers of *The Flying Apple Tree* during their investigation, some even complained of losing a place to shop for cheap "branded" gifts if the police closed down the store.¹⁵⁴

Consumers' comments to *The Flying Apple Tree* on an online forum further sheds light on why consumer reports would not work effectively as a way to curb the counterfeit stores. In November 2013, not long after the close down of *The Flying Apple Tree*, some past customers of the store started a conversation thread on Tianya.com, a large and influential Chinese online forum.¹⁵⁵ They discussed and speculated what happened to the store and its owner, expressed anger toward Li's conduct, and lauded the demise of the once profitable store. Ironically, most of them were not angry at Li's conduct of selling counterfeits. Instead, they were outraged by the higher prices she charged compared with other counterfeit sellers, the products' low quality that contradicted her guarantee, and her condescending attitudes. Despite Li's firm claims that her products were genuine, most participants in the conversation seemed to be fully aware of the fact that the products were in fact knock-offs. The sentiments of the participants of this conversation thread further confirmed that many consumers of counterfeit luxuries knowingly purchased the knockoffs as they were drawn by the low prices. Thus, not surprisingly, few consumers, indeed perhaps no consumers, would report the new store to Taobao or to the police.

VII. Conclusions and Directions for Further Research

A close examination of the development of government regulation and Taobao's self-regulation against counterfeits shows that the regulatory regime has gradually shifted from independent government regulation and marketplace self-regulation to co-regulation. Both the government and the online marketplace began building regulatory initiatives in 2006, dedicating their resources to rule-making and infrastructure building that set the stage for the enforcement in

¹⁵² "Taobao's High Profile Anti-Counterfeiting Campaigns Suspected for US IPO [淘宝高调打假 被疑为赴美上市]," *IT Time Weekly*, August 7, 2013, <http://www.ittime.com.cn/index.php?m=content&c=index&a=show&catid=83&id=4355>.

¹⁵³ "Taobao's *Flying Apple Tree* was Closed Down [淘宝上大名鼎鼎的“飞翔苹果树”家被封店了]," *Tianya BBS*, November 7, 2013, accessed September 10, 2014, <http://bbs.tianya.cn/post-funinfo-4747037-1.shtml>.

¹⁵⁴ "Would an Online Storeowner who Fly to Fashion Shows Sell Counterfeits?"

¹⁵⁵ To see the original conversation thread, see on Tianya BBS at <http://bbs.tianya.cn/post-funinfo-4747037-1.shtml>.

later years. Since 2010, both regulators have sharpened their regulatory teeth with greater enforcement, frequently in the form of concentrated, publicized campaigns. With the maturation of the C2C online market and the clarification of the scope and liabilities of regulation, the government and the marketplace have increased cooperation since 2012, developing a collaborative co-regulatory regime.¹⁵⁶

In light of the lack of access to internal government and Taobao documents, one must be careful in attributing motivations to the Chinese anti-counterfeiting policies. Nonetheless, the dominant forces that appear to have driven the formulation of regulatory policies and shaped the enforcement efforts have been the interests of two primary domestic regulators, which in turn reflect the conflicting interests of other key participants in C2C online trading. The development of government regulation against C2C online counterfeits echoed the government's wider agenda of intellectual property governance. Government regulation has generally manifested a tendency to prioritize perceived domestic economic interests over other considerations. While the government has strengthened its enforcement as the regulatory demands from foreign institutions and domestic businesses increased since around 2010, it nevertheless remained protective of Taobao's ongoing capacity to secure the growth of a pivotal domestic business infrastructure. Government enforcement actions have consistently targeted individual counterfeit sellers. Although recent legislation and administrative rules have placed greater burden on the marketplace, there has not been a single enforcement action against the online marketplace itself.

Multiple factors have shaped Taobao's self-regulatory framework and determined the effectiveness of the regulation, but Taobao's need to meet the demand from other stakeholders and thus to fulfill its business interests seemed to have been, above all, the steering force. The passage of the laws that transferred greater liabilities on Taobao and Taobao's pursuit of IPO overseas did alter Taobao's strategic calculations, leading it to place greater weight on governmental expectations and the demands of foreign interests. Taobao responded by tightening the regulatory oversight of its sellers, which eventually led to the institutional shift from independent regulation to greater cooperation with the government and international stakeholders.

The contrast between the prevalence of counterfeits on Taobao and the seemingly substantial and intensifying regulation, carried out by both the marketplace and the government, further demonstrates the complexity of online counterfeit regulation in China. For all the international accolades that Taobao has received for its more stringent post-2011 policies, it continues to deflect calls for yet stronger actions through appeals to the technical limits posed by online marketplaces. Nonetheless, the problem of information asymmetries and creative evasion of filtering algorithms can also be overcome by a combination of adaptive technology and enforcement strategies that focus on evasive marketing strategies.

As in the case with so many contexts of business self-regulation, the commitment to regulate online counterfeit sales in China has depended heavily on the pressure exerted by the government. Heightened government concern over the consequences of online counterfeits, perhaps best demonstrated by the ratification of laws and administrative rules that increased the regulatory burden of the marketplaces, pressed Taobao to adjust its regulatory strategies. Nonetheless, the widespread prevalence of counterfeit listings despite the more stringent regulatory frameworks imposed since 2011, the still limited enforcement of established laws and marketplace rules, and the arguably inefficient use of anti-counterfeiting mechanisms raise questions about the depth of regulatory commitment in this arena.

¹⁵⁶ See Appendix 1 for a multi-layered chronology of the regulatory development.

The Chinese regulation of online counterfeits have indeed demonstrated an expedient character through the regulators' attempt to advance certain interests over the others, which would often seem to override their attempt to redress the general phenomenon. The Chinese government has weighed domestic business interests more heavily than foreign ones as it sought to balance them on a scale that maximizes the benefits to domestic economy. Many brands that are severely plagued by counterfeiting are owned by foreign companies, yet Taobao, whose business is likely to have benefited from the trading of counterfeits, contributes a great share to the country's economic development. The counterfeit production chain also matters to the country's manufacturing industries, which are important pillars of the country's productivity and employment. For executives at Taobao and Alibaba, there are strong reasons to exercise flexibility in choosing whose interests to protect. By establishing the intellectual property portal at an earlier time for foreign rights holders, for instance, they prioritized foreign business interests over domestic ones. By implementing stricter restrictions on counterfeit electronic products and looser ones on counterfeit luxuries, they arguably sought to advance the "best" interests of Chinese consumers. The overarching principle, nonetheless, would seem to involve advancing direct and immediate business concerns, such as profit and capital, over indirect ones, such as preserving the products' brand value or wider consumer confidence in C2C E-commerce.

The more skeptical eyes may be inclined to view the Chinese regulation of C2C counterfeits as a symbolic show—an attempt by the regulators to convince the anti-counterfeiting coalition that they mean business without actually compromising Taobao's business model that continues to include scope for the sale of highly demanded counterfeit goods. While it is clear that the Chinese government and Taobao have at times prioritized interests fulfillment over counterfeit reduction, more accurate measurements of their enforcement efforts would be helpful to assess the exact nature of the regulation. For instance, while Taobao claimed to have delisted tens of millions of counterfeits from its websites each year, an accurate measurement or reliable estimate of the total amount of counterfeits on the website would reveal whether the seemingly substantial achievement was actually only trivial. Measurements or estimates of the changes in the numbers of counterfeit listings and sellers would reveal the actual impact of the regulation on counterfeit selling. Evaluations of Taobao's financial capacity for regulatory investment would further shed light on its regulatory commitment.

One should also be cautious that, though the Chinese regulators appear to have used online counterfeit regulation to advance their perceived best interests, their policy choices are not necessarily the best means to serve those interests, if they have correctly identified their best interests at all. Alternative regulatory strategies might have been more effective at advancing the goals of stimulating the economy and promoting business development, and both Taobao and the Chinese government might have misconceived their interests. Moreover, regulatory decisions, like all other policy decisions, are frequently affected by both state and corporate politics. What appear as the "best interests" may well have been the results of political compromise. Further studies with access to internal government and Taobao documents will better expose the policy-making processes, and cost-benefit analysis of current and alternative policies will help evaluate how effectively Chinese regulation serves the interests of different stakeholders.

The development of regulation against C2C online counterfeits in China also reveals the limits of transnational regulatory governance of online intellectual property. The Internet has truly globalized the market by blurring the physical boundaries between countries, offering brand owners greater stakes in foreign markets. However, without direct access of and control over the

foreign marketplaces, brand owners have to rely heavily, if not completely, on intermediaries like E-commerce platforms to help them regulate against infringements of their rights. Yet as the case in China demonstrates, the prerogative has almost always been in the hands of the intermediary, Taobao, who has only selectively fulfilled the external demand based on its business interests. As the only private entity that has direct control over the marketplace, Taobao's power in the transnational regulatory regime proved to be disproportionate. Yet the brand owners have had little leverage other than resorting to lawsuits, unless Taobao had direct business dealings in their countries, such as Alibaba's pursuit of IPO in the US.

However, the overseas ventures of online commerce companies like Alibaba also open up new opportunities for foreign brand owners and other potential foreign and international regulators. As Alibaba ventured into the US capital market and expanded its business in western countries, it is now accountable to foreign investors, more exposed to the scrutiny of foreign brand owners and media, and more vulnerable to foreign and international oversight. The IPO and market expansion have raised Alibaba and its business component Taobao to the international playing field, offering foreign brand owners opportunities to gain greater control of the marketplace and increasing their capacity to regulate through the intermediaries. The overseas expansion of Alibaba will also likely provide incentives for the company to become a more dutiful regulatory intermediary in order to ensure its continuing success in the western consumer and capital market.

Whether brand owners will effectively take advantage of the opportunities is nonetheless open to question. While brand owners have claimed firm opposition to the counterfeits on Taobao, they have generally taken few aggressive measures to urge Taobao to take them down. It is possible that brand owners can tolerate counterfeits to a certain extent. It is also possible that online counterfeits, which are affordable to a wider range of consumers, benefit the brand owners by helping spread their names. In fact, a study has shown that more than 40 percent of the counterfeit luxuries users would convert into genuine luxuries users as their income increased.¹⁵⁷ As every petition against online counterfeits generates costs, the potential gain from the petitions may be so small that it is unworthy of the brand owners' effort. None of these potentialities conflict with brand owners' attacks on online counterfeits, as failure to denounce counterfeits may lead to the slippery slope that enervates the brands' position in future trademark disputes. Further research into the brand owners' incentives, perceptions and strategic decision-making could help test these hypotheses and contribute to assessing the role of brand owners in the transnational governance of intellectual property. Potential research directions include analysis of the brands' position demonstrated in its internal records, publications and past lawsuits, as well as quantitative studies on the size of the counterfeits market and the benefits and losses it incurs.

Last but not least, E-commerce has truly globalized the goods market by eliminating the physical boundaries, and the process is facilitated by the multi-nationalization of the companies that host E-commerce. Regardless of how each player reacts, the new market is challenging the traditional model of intellectual property regulation and calling for a new and more effective model for transnational intellectual property governance. Studies of how international players have responded to the rising challenge will offer greater insights into the design of an optimal transnational regulatory framework. Information including whether and how international organizations, such as the WTO and IACC, have envisioned the framework, and how, if any, E-

¹⁵⁷ Renée Gosline, "The real value of fakes: Dynamic symbolic boundaries in socially embedded consumption" (doctor's thesis, Harvard Business School, 2009), 36.

commerce companies around the world have interchanged ideas or even collaborated on designing their transaction rules would be very helpful.

Taobao / Alibaba's international cooperation	MOU with Coach														Signed agreement with IACC			MOU with Louis Vuitton		Signed MOUs with French and Italian governments		Partnered with CBCC		Reached a deal with Kering											
Taobao / Alibaba and government cooperation															Taobao third party inspection service			MPS guided Taobao to share information with internet companies		Alibaba invited government agencies to press conference		Alibaba shifted strategies to cooperate with government		Taobao-MPS campaign against counterfeiters in 8 regions		Taobao attended MOFCOM conference									
Government enforcement actions															Special Operation Against Intellectual Property Infringement and the Production and Sales of Counterfeits (State Council)		Sword Action (MPS)		Online supervision platform (SAIC)		Nine agencies announced cooperative enforcement action		SAIC dispatched inspection to Shandong and Guangdong		SAIC launched special operation against online counterfeiters		SAIC launched Red Shield Actions								
Government rule-making	State Council's Opinions on Accelerating the Development of Electronic Commerce (State Council, 2005)		Ministry of Commerce's Guidelines for Online Trading (Draft) (MOFCOM)		Ministry of Commerce's Guidelines for E-Business Model (Draft) and the Service Specification for Online Shopping Transactions (Draft) (MOFCOM)		Options on Implementing the Rules of Promoting Informationization in Building and Strengthening Regulations of Electronic Commerce (BAIC)		Temporary Regulations of Online Commodity Transaction and Service (SAIC)		Third-Party E-commerce Transaction Platform Service Regulations (Draft) (MOFCOM)		Amendment to the Consumer Protection Law (The National People's Congress)		Regulations of Online Trading (SAIC)																				
Alibaba's business development	Founded Taobao (2003)				Opened Tmall						Signed agreement with Yahoo! — preparation for IPO		Hong Kong IPO failed		Launched IPO in NYST																				
Taobao enforcement actions					"100 million anti-counterfeit plan"		Taobao Consumer Year		Published the Hangzhou Declaration of Combating Counterfeits with over 20 brand owners																										
Taobao's regulatory infrastructure building	Established the Security Department				50 anti-counterfeit specialists team		Price monitoring system		Reporting channels for consumers & brand owners		Seller ID registration & authentication system		Anti-counterfeit email account		¥100 million consumer protection fund		Standard price database		2400 counterfeit inspection volunteers		Alibaba launched intellectual protection portal for international sites		Taobao launched intellectual property protection platform		Increased guarantee deposit for cell phone products		Updated seller ID system		Mandatory 7-day return service		Alibaba established Intellectual Protection Group				
		2006		2007		2008		2009		2010		2011		2012		2013		2014																	
Building regulatory infrastructure																Campaigning against counterfeits										Increased cooperation & strengthened self-regulations									